

No. 9(1)82-P-IV-6Lab/9173.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Saraswati Sugar Mills, Yamna Nagar. :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 131 of 1977

(Ref. No. 313 of 1981)

between

SHRI VED PARKASH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S.
SARASWATI SUGAR MILLS, YAMUNA NAGAR

Appearance :—

Shri Sagar Ram Gupta, alongwith workman.

Shri R.L. Gupta, for the respondent management.

AWARD

This reference No. 181 of 1977 (Ref. No. 313 of 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—*vide* his order No. ID/Amb/125-B-74/46732, dated 25th October, 1977, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Ved Parkash, workman and the respondent-management of M/s Saraswati Sugar Mills, Yamuna Nagar. The term of the reference was :—

Whether the termination of service of Shri Ved Parkash was justified and in order ? If not, to what relief is he entitled ?

Labour Court, Rohtak issued the notice to the parties. The parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that he was appointed in the year 1948 as apprentice and he was made permanent Laboratory Chemist in the year 1955 and he was a permanent seasonal workman who was getting retainer every year and worked to the entire satisfaction of the management till November, 1971 when the management refused to allow him duty without any reason whatsoever, when the workman reported himself on duty. The workman filed a complaint with the management as well as with the Labour Officer, Yamuna Nagar for not giving him duty. The management gave charge-sheet on 7th July, 1971 which was replied on 15th July, 1971 and the respondent appointed Shri M.M. Ahuja as Enquiry Officer to enquire the matter of the claimant. The claimant objected for the appointment of enquiry officer but the objection was not heard and the enquiry officer proceeded with the enquiry. The enquiry officer issued the notice of appearance on 30th July, 1971 on which the objection was again raised. The claimant applied on 6th November, 1971 for permission to resume duty on the restart of the factory and the complaint was also filed to the Labour Officer. On this complaint the respondent demanded the explanation,—*vide* letter dated 29th December, 1971 and also noticed why his services would not be dismissed from the company. This letter was also replied by the workman but after this enquiry no orders of dismissal were passed or communicated to the workman. The story of the discharge of the workman on the close of the season in May, 1971 is an after thought and concocted one. If this would have been the correct position the question of issuing any charge-sheet in July, 1971 could not arise. The management again submitted his request to allow him to resume duty for the next season 1973-74 beginning from 20th November, 1973 but when no reply was received then the demand notice dated 28th December, 1973 was given. The workman also filed an application under section 33-C(2) for claiming his retaining allowance, wages and bonus and certain other amounts were also claimed therein, but the same was rejected by the Labour Court,—*vide* its order dated 26th December, 1975. The services of the workman were never terminated in accordance with any statute or standing orders. He was not just allowed to join his duty. The management after issuing the charge-sheet in July, 1971 and having failed to prove the same has concocted the story of discharge on close of season in May, 1971. The action against the workman is *cula fide* and has been taken with some ulterior motive and the workman is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workman was appointed as seasonal workman in the year 1975 and he continued to work in all season up to May, 1971. The next season was started in November, 1971 in which he did not report for duty and the workman after this season never came to report for duty. The workman made three applications before the Labour Court, Rohtak under section 33-C(2) for claiming certain benefits. Earlier the workman filed the claim under the payment of Wages Act,—*vide* application No. 49 of 1972, dated 3rd June, 1972 for the wages and bonus and after the prolong proceedings the workman withdrew the application. In application under section 33-C(2) there was a issue regarding the relationship of master and servant

between the management and the claimant and learned Labour Court, Rohtak dismissed the application and decided the issue in favour of the respondent holding that there is no relationship of master and servant between the parties. The workman for the first time served the respondent with the demand notice dated 19th November, 1973 which was contested by the respondent and the Labour Officer sent the report to the Government. The Government after thorough consideration of the whole matter including the report of the Labour Officer, rejected the demand notice and sent the information to the respondent and the workman. After rejection the demand notice the workman filed a civil writ No. 1206 of 1977 before the Hon'ble High Court of Punjab and Haryana praying that an appropriate order for direction for quashing the same. The same was pleased to dismissed,—*vide* speaking order dated 26th May, 1977 basing their view on the decision of the Labour Court, Rohtak. After the decision of the High Court there is change in the Government in the State and the workman made an application to the Hon'ble Labour Minister who ordered for the reference. Before issuing the said notification no new facts had come into light nor the notice was issued to the respondent as to why the Government was considering the matter of reference afresh especially when the same had been refused earlier and after the decision of the High Court. The statement of claim of the workman has challenged his re-employment from November, 1971 where as in the demand notice he claimed re-employment in the season 1973-74. The order of reference should have for the demand notice for the reinstatement and since the question for re-employment has not been referred for adjudication, this Hon'ble Court has no jurisdiction to go into the claim as preferred in the statement of claim. So the reference be rejected.

On the pleadings of the parties following issues were framed by my predecessor :—

1. Whether the reference is barred by principles or *res judicata*?
2. Whether the reference is without jurisdiction, illegal and un-sustainable in law?
3. Whether the order of reference is *mala fide* on the grounds mentioned in para 22B of the written statement?
4. Whether the dispute between the workman and the management is not an Industrial Dispute?
5. Whether there is any material statement of claim? If so, to what effect?
6. As per reference?

This case was transferred to me,—*vide* Secretary to Government, Haryana, Labour and Employment, Chandigarh order No. 1(79)80/1-Lab, dated 20th October, 1981. I recorded the evidence of the workman and my findings on the issues are as under :—

Issue Nos. 1 to 5 :—

Issue Nos. 1 to 5 are inter-connected issues based on the same arguments. Both the parties argued these issues together. The representative of the respondent argued on these issues that the workman was appointed as seasonal workman as Laboratory Chemist in the year 1975 and continued to work in all seasons upto the season ending in May, 1971. The next season started in November, 1971 in the workman did not report for duty. The Certified Standing Orders are applicable to the respondent and in the relevant standing order the type of the workman have been defined. The seasonal workman has been defined as under :—

“A seasonal workman is one who is engaged in the crushing only and/or may also be employed for the period necessary for cleaning and over hauling either before or after the season and is discharged after work is finished”.

and the definition of permanent workman is given as under :—

“Permanent workman is one who is engaged on a permanent nature of work throughout the year and has completed his probationary period, if any. Provided that the period of probation is three months unless extended by the Mills upto a maximum of six months.”

The workman worked as seasonal employee till season 1970-71 when he was discharged at the close of the crushing season in May, 1971. The next season started in November, 1971. The workman did not report for duty and did not work in the respondent management during the season 1971-72 nor during the season 1972-73 and 1973-74 or any subsequent season. He was discharged as per the standing order in May, 1971. The workman made an application No. 172 of 1971, dated 9th May, 1972 under section 33-C(2) before the Labour Court Rohtak claiming a sum of Rs. 370 as retaining allowance for the period from June, 1971 to November, 1971. He filed another application No. 66/73, dated 12th February, 1973 claiming Rs. 934.94 as Retaining allowance for the period from 15th May, 1972 to 26th October, 1972 under section 33-C(2) before the Labour Court, Rohtak. He filed another application No. 86 of 1974, dated 14th March, 1974 claiming Rs. 2,848/- as wages for the period from 27th October, 1972 to June, 1973 and Rs. 615/- as bonus for the year 1971-72 and Rs. 754.40P.

as retaining allowance for the period for July, 1973 to 18th November, 1973. The workman also filed a claim under Payment of Wages Act.—vide application No. 49 of 1972, dated 3rd June, 1972 claiming Rs 905/- as wages for crushing season 1971-72. After a prolonged proceedings the workman withdrawn the application before the Wages Authority. The workman filed another application under section 33-C(2) of the I.D. Act No. 371 of 1974 claiming Rs. 583/- for the year 1971-72 and Rs. 1905/- wages from 21st November, 1971 to 5th May, 1972. All these applications were consolidated by the Labour Court, Rohtak and dismissed all the applications,—vide order Ex-M-16. The learned Labour Court framed the issue as under:—

Whether the relationship of employer and employee existed between the parties at the relevant time and can this question be gone into these proceedings.

and after taking the evidence of both the parties, the application of the workman was dismissed giving the findings of the issue in favour of the respondent. The workman for the first time served a demand notice on the respondent, dated 29th November, 1973 stating therein that you have started the season 1973-74, but have not allowed him to resume his duties though he presented again for the same at your gate on 20th November, 1973. The refusal to allow him to resume duty is to be deemed to deny the status of the employee. The respondent, contested the demand notice before the Labour Officer-cum-Conciliation Officer in the Conciliation proceedings. The Labour-cum-Conciliation Officer submitted his report along with abstract of the review, to the Labour Commissioner, Haryana on which the Labour Commissioner, Haryana wrote to the workman that your demand notice is not fit to refer for adjudication to the Labour Court to prove this fact. The respondent called Shri Ram Sarup, Assistant of Labour Commissioner who has proved the report of the Labour Officer which is Ex. M-1 alongwith the certain documents and the matter on 1st May, 1973 which is Ex. M-2 and another letter, dated 24th December, 1976 which is Ex. M-3. He has stated in his statement that the workman submitted an appeal to the Labour Minister which is Ex. M-5 which was received in the Labour Minister's Secretariat on 26th August, 1977 and no notice was issued to the management on this appeal. He further stated that from the file after the receipt of the appeal no notice was issued from the Labour Commissioner to the management regarding the receipt of the appeal and decision to refer this case for adjudication. He further argued that to prove this fact the respondent called Shri M.L. Malik, Deputy Labour Commissioner, Haryana, Chandigarh as MW-4 who has come with the relevant record and stated that the workman gave a representation to the Hon'ble Labour Minister for reference for adjudication. The earlier demand notice of the workman which was received through the Conciliation Officer was rejected by the Government. No notice to the management was served in respect of these representation as there is none on the record. He further stated that in the office note that the worker has filed at civil writ which has been filed and this fact was duly considered while making the reference. The representative of the respondent argued that these two witnesses has proved from the file that the earlier demand notice was rejected by the Government and the workman filed an appeal to the Labour Minister even after the dismissal of his writ petition for the rejecting the reference,—vide judgement of the Hon'ble High Court Ex-M-22. The above-mentioned facts shows that the reference is barred by the principles of *res judicate*. When the issued framed by the Labour Court, Rohtak decided in favour of the respondent and the judgement of the Hon'ble High Court regarding the rejection of the reference by the Haryana Govt., the claimant cannot claim anything in the reference because the workman has estopped by his conduct and barred by the principles of *res judicata* and it also proves that the reference is without jurisdiction, illegal and unsustainable in law because it is proved that the reference was rejected by the Government after going through the contents of the case that the workman has failed before the Labour Court, Rohtak in a issue of relationship between the parties. When one court has decided one issue about the relationship then the court of the same status cannot reopen the same issue and the court has no jurisdiction to decide these issue again and furthermore there was no new ground for appeal which was admitted by the Labour Minister who has no jurisdiction to admit the appeal and made the order for reference. After rejection of the writ petition of the workman on the ground mentioned in Ex-M-21. The writ petition filed by the workman against the rejection order of the Government. Under the law the Government should have heard the respondent on the appeal but the Government gave no notice to the respondent and no opportunity was given to the respondent to be heard for sending the reference. So the reference is without jurisdiction, illegal and unsustainable in law. He further argued that after the decision of the Labour Court, Rohtak which is Ex.-M-16 deciding the issue of relationship between the parties, there is no dispute between the workman and the management under the Industrial Disputes Act. In the demand notice the workman has stated that the respondent has refused to give him duty on 20th November, 1973 and in the claim statement the workman has stated that the respondent refused to give him duty on 6th November, 1971, when he demand notice and claim statement contradict with each other and this Hon'ble Court has to confine the scope of adjudication within the limit of the order of reference. Since the question of re-employment has not been referred for adjudication, this Hon'ble Court would have no jurisdiction to go into the claim as preferred in the statement of claim particularly when the action of the management about the actual discharged from service in May, 1971 is not disputed as unjustified and not in order. So there is no dispute between the workman and the management under the Industrial Disputes Act as argued above, and the reference may be rejected on the above basis.

The representative of the work man argued on these issues that the workman was appointed in the year 1948 as an apprentice in the laboratory of the respondent factory and made permanent as Laboratory Chemist in the year 1955 and he was a permanent seasonal workman who was getting retainer allowance every off season. He was an old employee of the respondent having 26 years of service in his credit as permanent seasonal workman, and was getting Rs. 328/- per month as salary. The workman was working to the entire satisfactory of the respondent till November, 1971 when the management refused to allow him duty without any reason. Though

the workman reported for duty. The workman lodged a complaint with the management as well as with the Labour Officer who issued the notice to the management but the management did not appear before the Labour Officer. The management never dismissed the workman by passing any order of dismissal according to the Certified Standing Order of the respondent as stated by the workman in his statement as WW-1. The season started in the month of November and closed in the month of June every year and the respondent used to call the workman at the start of the factory through the letters and the workman joined after receiving these letters. In the month of June, 1971 at the time of closing the season he went home as usual and was not called in the month of November, when the season was started. The Labour Officer issued the notice to the respondent which is Ex. W-1 but even after that the respondent did not agree to take the workman on duty and paid no compensation notice pay at the time of termination. No written termination was given to him. Then he gave the demand notice which was rejected by the Government and the workman filed a writ petition in the High Court. The respondent gave a charge-sheet, dated 7th July, 1971 which was replied by the workman. The management was not satisfied with the reply of the workman and demanded further explanation and this further explanation was also given by the workman in his letter, dated 21st July, 1971. The respondent appointed Shri M. M. Ahuja as enquiry officer who called the workman for the enquiry. The workman objected the appointment of the enquiry officer,—vide his order, dated 31st July, 1971 but without any reply on his objection the enquiry officer proceeded with the enquiry. He further argued that the workman again applied on 6th November, 1971 for permission to resume duty on restart of the factory but he was refused. No order of dismissal was passed by the respondent nor any order was communicated to the workman. The story of discharges of the workman on the close of the season in June 1971 is an afterthought and concocted one. If this would have been the correct position the question of issuing any charge-sheet in July, 1971 could not arise. The applicant again submitted in writing the request to allow him to join the duties in the season started in the year 1973-74 beginning on 20th November, 1973 but when no reply was received a demand notice, dated 28th December, 1973 for reinstatement as the action of the management refusing to permit him to resume duty amounted to termination was served upon the management. The claimant moved an application under section 33-C(2) of the I.D. Act before the Labour Court, Rohtak praying for computation of benefits upto 15th May, 1972 but the same was rejected by the Labour Court,—vide order, dated 26th December, 1975. The workman filed an appeal before the Government to review his order for rejecting the earlier demand notice, the appeal was accepted by the Government and the demand notice was referred for the adjudication before this Hon'ble Court according to law and the reference is not barred by the principles of *res judicata* because the Government has referred this reference to adjudicate whether the termination of the services of Shri Ved Parkash was justified and in order. If not, to what relief is he entitled? and this learned court has to go only upto to the reference by the Government. The matter was never adjudicated before it so it is not barred by the principles of *res judicata*. The Government referred the demand notice to this Hon'ble Court on the appeal of the workman after considering all the facts on the file before the Government and when the Government has referred the case to this court, the Court has jurisdiction to decide the matter. The reference is not *mala fide* on the grounds mentioned in para No. 20 of the written statement of the respondent. The workman was an old employee of the respondent and has right to get referred this reference on his demand notice. The Government considered every fact of the workman before referring this reference order to this Hon'ble Court and the respondent has wrongly stated the alleged mala fide in the written statement which was denied by the workman in his rejoinder. He further argued that after referring the demand notice for adjudication between the parties there is dispute between the parties regarding the termination of service which the respondent has terminated without any reason and not paid any notice pay or retrenchment compensation to the workman. So the dispute between the parties existed under the Industrial Disputes Act. The workman is entitled for his reinstatement with continuity of service and full back wages.

After hearing the arguments of both the parties on issues Nos. 1 to 5 and going through the file I, am of the view that the respondent has fully proved these issues according to law and on the other hand the workman has contradicted himself in his demand notice and claim statement and his own statement as WW-1. After the decision of the Labour Court, Rohtak on the issue of relationship and the judgment of the Hon'ble High Court on the writ petition of the workman on the point of rejection the demand notice by the Government the present reference is barred by the principles of *res judicata* and the reference is without jurisdiction. When the High Court have rejected the writ petition of the workman where he has claimed that the Government has wrongly rejected his demand notice the Government order for this reference is without jurisdiction and illegal and a not sustainable in law and when the Labour Court, Rohtak decided the issue of relationship between the parties from 1971 onwards then this reference is also bad when there is no relationship as decided by the Labour Court between the parties after May, 1971 this reference cannot be sent to the Court for adjudication, because there is no relationship between the parties. The arguments put forwarded by the respondent's representative have force and I agree with the arguments and all these issues are decided in favour of the respondent and against the workman.

Issue No. 6.—

After deciding issue No. 1 to 5 in favour of the respondent there is no need to discuss this issue as the reference is bad in law and the Government cannot after this case adjudication, after decision of the Labour Court, Rohtak and the judgement of the Hon'ble High Court, so this issue is also decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated, the 30th August, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 1942, dated 1st September, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 6th October, 1982

No. 9(1)82-P-V-6Lab-9666.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the Dispute between the workmen and the management of M/s Snyei Plastics, 44 K. M., Mathura Road, Ballabgarh :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 535 of 1980

between

SHRI SURAJ MAL, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S SNEYI
PLASTICS, 44, KM., MATHURA ROAD, BALLABGARH

Shri G.S. Chaudhary for the workman.

Shri R. Gogna for the respondent-management.

AWARD

This reference No. 535 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/119-80/58566, dated 1st December, 1980, under Section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri-Suraj Mal, workmen and the management of M/s. Snyei Plastic, 44 KM, Mathura Road. Ballabgarh. The term of the reference was:—

Whether the termination of services of Shri Suraj Mal was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he was appointed as operator on 1st January, 1973 at a salary of Rs. 500/- per month. He was working satisfactorily and his services were terminated on 3rd July, 1980 without assigning any reason. No charge-sheet was issued to the workman for termination. So the workman is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workman never served any demand notice on the management regarding his alleged termination nor was rejected by the management and there is no Industrial Disputes. Hence the Government has committed an error of law in referring the same for adjudication in this court. The respondent is employing only 3 to 4 workmen. Hence is not covered under the Factories Act. It is covered under the Shops and Establishments Acts. The dispute is beyond the provisions of the Shops and Establishment Act on which the services of the claimant are governed. The claimant is not covered beyond the scope of that Act. The claimant was being tolerated due to acute shortage and scarcity of skilled and supervisory persons in the Plastic Industry. The workman also work at will and his attendance in the factory and the overall performances including those of other persons working under him, were far below the expectations, which situation was tolerated by the management because any person is interested in going to the remote areas far from a regular industrial complex, which is 9 Km away from Ballabgarh towards Palwal. The claimant started losing all interests in his work and was repeatedly asking for service compensation, etc., as he was no more interested in the job. The workman abruptly started absenting himself from duty and it came to the notice of the respondent-management that the claimant has already settled his business arrangements with other persons started manufacturing paper packagings at his residence before abandoning his job in which he had lost all interest much earlier. The management never terminated the services of the claimant rather the claimant abandoned his job absenting himself without any intimation. So there is no question of issuing any termination to that effect. There is no manager with the respondent in the relevant time and if the claimant has manipulated something with some one who acted without any authority to that effect, the management is not bound by any such act of any unauthorised person. The management is still ready to take the workman in its employment on terms and conditions on which he lastly worked or on any other conditions mutually settled between the parties. The claimant is gainfully employed. So he is not entitled for any relief of back wages and continuity of service.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the reference is bad in law for objection taken in the written statement by the management? If so, to what effect?
- (2) As per reference?

My findings on the issues are as under:—

Issue No. 1—The representative of the respondent-management is employing only 3 to 4 persons and is not covered under the Factories Act and is covered under the Shops and Commercial Establishment Act, the claim of reinstatement is beyond the provisions of the Shops and Establishment Act as such the claim is not maintainable being beyond the scope of the Shops and Establishments Act as stated by the respondent witness Shri J.P. Jain, as MW-1, who has stated in his statement that he knows the workman personally who worked under him and he was a supervisor in the factory. There were two to three workmen working under him. He got the work done as directed by him. Only 3-4 workmen were working in the factory in June, 1980 and their factory covered under the Factories Act. So the claim of the workman is not maintainable as the Establishment is not covered under the Industrial Disputes Act. The second objection taken by the respondent in the written statement is that the demand notice is not served on the management regarding this alleged termination nor was the same ever rejected by the management. As the matter in hand does not constitute any industrial dispute and hence the Government has committed an error of law in the referring the same for adjudication before this court. The learned counsel of the respondent has cited FLR-1968 page 307 Supreme Court and 1970 FLR Page 343 Delhi High Court, 1979 Vol. 39, FLR, 1975 FLR-Supreme Court in this regard that if no demand notice is served on the management then there is no Industrial Dispute. He further argued that the citation are hold good in the eye of law as the same is not overruled by any full bench of the Supreme Court and the Supreme Court adopt this ruling of the Supreme Court. On the other hand the workman has not rebutt anyway the objection of respondent in the written statement. He has not produced any evidence and not stated a single word in his statement as WW-1 it shows that the workman admits this fact of the respondent and has nothing to say on these objections which are legal objections and on the same base the reference can be rejected.

The representative of the workman argued on this issue that the workman has stated in his cross-examination that 30 workmen are working in the factory and the workman comes under the Industrial Disputes Act and covered under the Factories Act Shri Govil was the Production Manager in the factory and the workman gave demand notice to the manager M/s Synei Plastics, 44 KM, Mathura Road, Ballabgarh. The objection raised by the respondent have no weight and it is for the objection sake.

After hearing the arguments of both the parties and going through the file, I am of the view that the objection raised by the respondent have the legal force. The workman produced no evidence in respect of the fact that the respondent expressly stated in his written statement that no demand notice is served on them and without which there is no Industrial Disputes with out which it cannot be said that the workman raised the demand notice upon the respondent and the other objection that the respondent factory was employing only 3 to 4 workmen was not rebutted by the workman by any documents and evidence of the workman. The workman has come as his own witness and there is no support to the workman statement. So the issue is decided in favour of the respondent and against the workman.

Issue No. 2—Issue No. 2 is as per reference? The representative of the respondent argued that the claimant abandoned his job without any information w.e.f. 3rd July, 1980 to start his own business of paper packaging as stated in para No. 2 of the written statement which was further corroborated by the statement of Shri J.P. Jain, Production Incharge of the factory as MW-1. The witness was not rebutted through the cross-examination and hence the same is presumed to be correct. The fact was further confirmed by the workman in his cross-examination that he prepares the paper envelope at his residence because he had to make both ends meet. The management never terminated the services of the workman and offered him to come back on duty. But the workman never showed any desire to come on duty but always remained greedy for the money and back wages without any intention to join duty and work with the respondent. The respondent in their written statement made an unconditional offer to the claimant to join duty on 30th January, 1981 but to no effect. The workman took many adjournments to filing the rejoinder but did not make any respondent nor ever tried to join the duty as he was gainfully employed in the paper packaging. This fact was further established through management witness in this examination-in-chief of the management witness as MW-1, where he has stated he also offered him to work in this court and their written statement mention about the same. The respondent, has not appointed any substitute at the place of the applicant and still ready to accommodate even on higher pay. He further argued that even after this statement of the witness that they are ready to accept workman even on higher pay shows the intention of the management to offer the employment to the workman but the workman has denied to accept this offer in the court and in the statement and in the cross-examination where it is mentioned that "I am not ready to accept the offer and join the service without payment of my back wages." This shows that the workman is not ready to work with the respondent and simply wants the money from the respondent. He further argued that machine on which the

workman used to work was some thing different machine which is not available in Haryana, Delhi or any factory and after absenting of the workman the machine is not working due to the skilled workman. Earlier to this the workman left this job so many times but each time the was re-accommodated due to shortage of highly skilled workers in the trade. The respondent representative referred the Supreme Court judgement in the case of Oriental Textiles Finishing Mills, Amritsar V/s Labour Court, Jullundur and others where in giving reference to earlier cases it held that where the management offers the workman to join duty but they remained persistent on not doing so, their services can be legally terminated. In the present case the respondent never terminated the services but the workman abandoned the services as he has already set up paper packaging industry. So the reference be dismissed.

The representative of the workman argued on this issue that the workman joined the services of the respondent in January, 1973 as operator at a monthly salary of Rs. 300 and he was working properly upto the satisfaction of the management but the respondent abruptly terminated the services of the respondent in July, 1980. He was getting Rs. 540 at the time of termination as stated by the workman as WW-1. He visited the factory up to 10 or 12 days after the removal from service but he was not taken on duty and the manager gave a slip mark 'A' to the the workman to take his accounts from Delhi office. No termination letter was given to the workman. No enquiry or chargesheet was given or held against the workman for terminating the services of an old employee. So the workman was illegally terminated by the respondent without any cause or reason. So he is entitled for the continuity of service and back wages.

After hearing the arguments of both the parties and going through the file I am of the view that the respondent has full prove the case of termination. The workman cannot rebutt the evidence of the respondent by any way. The respondent offered the workman in the court to join his duty but he gave no effect in the written statement and also in the respondent witness as MW-1. The respondent witness as stated in the court that they offered to work as they have not appointed any substitute in his place and till ready to accommodate even on higher pay. Even after this workman did not agree with the respondent to take job even in the court. It shows that the workman is not interested in the job. He simply want the back wages as stated by the representative of the respondent and in the written statement. The workman absented himself from duty and he has started his on business of paper packaging which was not rebutted by the workman in any way which shows that the workman is self employed and earning big amount and did not accept the offer of the respondent of employment which prove the fact that the left the job without intimation. So this issue is decided in favour of the respondent and against the workman and the workman is not entitled for any relief in these circumstances

This be read in answer to this reference.

Dated the 1st September, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 2004, dated the 13th September, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No 9(1)82-PV-6Lab-9667.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the Dispute between the workman and the management of M/s. S. J. Knitting and Finishing Ltd., 13/7, Mathura Roads Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 253 of 1981

between

SHRI JIWA DHAN, WORKMAN AND THE MANAGEMENT OF M/S S.J. KNITTING AND
FINISHING LIMITED, 13/7, MATHURA ROAD, FARIDABAD

Shri M.K. Bhandari, for the workman.

Shri B.R. Grover, for the respondent-management.

AWARD

76 This reference No. 253 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/141/81/48612, dated 25th September, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Jiwa Dhan, workman and the respondent-management of M/s S. J. Knitting and Finishing Limited, 13/7, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of service of Shri Jiwa Dhan was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice is that he joined the service of the respondent on 14th December, 1974 and was getting a salary of Rs. 415 per month. The respondent stopped the workman on the gate on 24th April, 1981 without any reason or cause. On 28th April, 1981, the workman filed a complaint to the Labour Inspector. The Labour Inspector issued the notice to the respondent. But the respondent did not come present before the Labour Inspector and he advised for the demand notice. The workman gave the demand notice on 21st May, 1981. The copy of which was sent to the respondent through registered post. The respondent has illegally terminated the services of the workman and the workman is entitled for the reinstatement with continuity of service and full back wages.

The case of the respondent according to written statement is that the workman started being absent without permission and sanction of leave from 24th April, 1981 and remained so upto 24th June, 1981 whereupon a letter was sent asking him to report for duty. But inspite of directions the workman did not join his duties and his name was removed from the Muster roll of the company treating him having leaving the job of his own accord and there is no Industrial Dispute and the reference be rejected.

On the pleadings of the parties, the following issues were framed:—

1. Whether the workman abandoned his services by absenting himself and lost his lien. If so, to what effect?
2. As per reference?

My findings on the issues is as under:—

Issue No. 1.—The representative of the respondent argued on this issue is that as stated by Shri R.N. Sharda, Chief Security Officer as MW-1, the workman started absenting himself from duty from 24th April, 1981 and remained absent upto 31st May, 1981. So the name of the workman was struck off from the roll of the company after long absence and in accordance with the Model Standing Orders which are applicable to the respondent. The copy of the attendance register is Ex.-M-1 in which it is shown that the workman remained absent from 24th April, 1981 to 31st May, 1981.

The representative of the workman argued on this issue that as stated by the workman in his statement as WW-1 that he joined the service of the factory on 14th December, 1974 and was drawing Rs. 415 per month and he was stopped at the gate on 24th April, 1981 without any reason or cause. The workman visited the gate of the factory daily for his duty but he was not allowed to enter in the factory. On 28th April, 1981, the workman made a complaint to the Labour Inspector which is Ex. W-1 for not allowing the workman for duties. The Labour Inspector issued a notice to the respondent for some settlement but the respondent did not appear before him. The workman submitted a demand notice on 21st May, 1981 to the respondent through registered post which is Ex. W-2 and the registration receipt is Ex-W-3 and acknowledgement is W-4. The respondent received this demand notice on 25th May, 1981 as it is clear on the acknowledgement receipt. After receiving the demand notice through registered letter, the respondent did not care to reply the demand notice or to call the workman for some settlement. The respondent appear before the Conciliation Officer and took the plea of absent stating therein that they are ready to pay retrenchment compensation under section 25-F of the Industrial Disputes Act. He further argued that the respondent has stated in their written statement that they sent letter to the workman to join his duty but they failed to produce any letter in the court and the workman has denied to receipt of any such letter from the respondent which shows that the respondent did not send any letter to the workman for this purpose and they intentionally removed the workman without any cause and the workman has not left the service of his own.

After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has failed to prove that the workman abandoned the services of his own accord by way of absenting himself from duty. In the written statement they have stated that the workman started absenting himself from duty from 24th April, 1981 to 24th June, 1981 but the respondent witness Shri R.N. Sharma has stated in his cross examination that the workman started absent himself from duty from 24th April, 1981 to 31st May, 1981. There is contradiction in the written statement and the statement of the respondent witness which creates doubt and the benefit of doubt should be given to the workman. The respondent further stated in the written statement that they sent a letter before terminating the services of the workman and after receiving the demand notice they submitted no such letter in the court which shows that the respondent did not issue any letter to the

work man and they have intentionally removed the workman without any reason for cause and has not abandoned of his own. So the issue is decided in favour of the workman and against the respondent.

Issue No. 2.—After deciding Issue No. 1 in favour of the workman there is nothing left with the respondent on issue No. 2 as the workman was removed from the service without any justification and the removal is not in proper order and the respondent are not justified in removing the service of the workman. The main plea taken by the respondent for removal of the workman has failed, so the workman is entitled for reinstatement with continuity of service and full back wages.

This be read in answer to this reference.

The 3rd September, 1982

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 2005, dated 13th September, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Govt. Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)-82-PV-6 Lab/9668.—In pursuance of the provision of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. S.J. Knitting and Finishing Mills, Private Ltd., 13/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 131 of 1981

between

SHRI LAL CHAND, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S.
S.J. KNITTING AND FINISHING MILLS, PRIVATE LIMITED, 13/7, MATHURA
ROAD, FARIDABAD

Shri Mohit Kumar Bhandari, for the workman.

Shri B.R. Grover, for the respondent management.

AWARD

This reference No. 131 of 1981 has been referred to this court by the Hon'ble Governor of Haryana, — vide his order No. ID/FD/43-81/16790, dated 25th March, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Lal Chand, workman and the respondent management of M/s. S.J. Knitting and Finishing Mills, Private Limited, 13/7, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Lal Chand was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to the demand notice is that he joined the service of the respondent on 15th June, 1976 as Printer @ Rs. 310/- per month. On 26th December, 1980 when he was working in the factory supervisor Shri Satinder Singh with other five persons beaten him seriously and throne him out of the factory. The workman reported the matter to the police on the same day and came to factory gate on 27th December, 1980 for joining his duty but he was not allowed to join his duties. The workman made a complaint on 30th December, 1980 to the Labour Inspector for this purpose but no avail. He raised the demand notice. The workman was terminated illegally and he is entitled for the reinstatement with continuity of service and full back wages.

The case of the respondent according to the written statement is that the workman was appointed as Printer on 15th June, 1977 @ Rs. 310/- per month. From 26th December, 1980, the workman started being absent without sanction of leave. The respondent-management sent a registered letter to the workman directing him to report for duty. It was received back with the postal authority remarks as refused. The Model Standing Orders are applicable to the factory and the workman remained absent and did not report for duty. The name of the workman was struck off the roll of the factory for his long absence, having left the service of his own. This being the case of loss of lien on the job the same is not covered under section 2A of the Industrial Disputes Act. So the reference may be rejected.

On the pleadings of the parties following issues were framed :—

1. Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on the issues is as under :—

Issue No. 1.—The representative of the respondent agreed on this issue that as stated by Shri R.N. Sharda Chief Secretary officer, as MW-1 the workman joined the company on 15th June, 1977 as Printer and on 26th December 1980 he absented himself from duty of his own. The respondent issued registered letter dated 5th January, 1981 to the workman which is Ex. M-1 and the postal receipt is Ex. M-2. The workman refused to take the registered letter so it came back un-delivered with the postal authority remarks as Refused, and after receiving this registered letter un-delivered the name of the workman was struck off from the roll of the company due to the long absence. The workman sent the demand notice and on that demand notice the respondent appeared before the Conciliation Officer 2nd report of the Conciliation officer is Ex. M-4. The services of the workman were terminated due to long absence and treating him having left the service of the company of his own and lost his lien of the job. So the order of termination is justified and the reference may be rejected.

The representative of the workman argued on this issue that as stated by the workman as WW-1 he joined the services of the respondent on 15th June, 1976 as a Printer and was terminated from the service from 26th December, 1980 without any reason. He was beaten by the Supervisor Shri Satinder Singh with four other persons and thrown out from the factory. He was seriously injured in the beating and reported the matter to the police. The police taken the report of the workman. The copy of which is Ex. W-1 in which the workman has stated all the story which he has stated in the court and the workman also made the complaint to the respondent-management.—vide letter Ex. W-2 through registered letter which was received by the respondent which is clear from the acknowledgement receipt Ex. W-5 and the postal authority registration Ex. W-4. The complaint was also sent to the Police Choki incharge under UPC. The UPC receipt is Ex. W-6. The respondent received this complaint on 29th December, 1980 as this is very clear from the acknowledgement Ex. W-5. The respondent did not take any step even after the receipt of the complaint from the workman. It was in the knowledge of the respondent about the beating of the workman as they received the complaint from the workman, dated 27th December, 1980. The workman went on the factory gate on 27th December, 1980 for joining the duty but he was not allowed to enter in the factory by the chowkidar of the factory as he has got direction from the respondent. He further argued that the workman has stated in his statement that supervisor Shri Satinder Singh with other four workmen beaten the workman. The respondent should have brought Shri Satinder Singh in the court to rebut this evidence but the respondent did not produce Shri Satinder Singh, Supervisor in the court which proves that the workman was beaten on 26th December, 1980 and turned out from factory. He further argued that letter sent to the workman, dated 5th January, 1981 which is Ex. M-3 was not received by the workman as the envelope bears the written address and without receiving this letter there is no sanity of this letter and the workman was terminated by the respondent without any reason or cause. Though the workman was an old employee and there was no such complaint against the workman during the period of his service. So this illegal termination of service and the workman is entitled for reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties, and going through the file, I am of the view that the respondent has failed to prove this fact that the workman absented himself from his duty of his own accord on 26th December, 1980 and did not come to join his duty after that date because the letter Ex. W-2 is very clear in this respect which was sent the workman through registered letter and it was received by the respondent on 29th December, 1980 and came to know the contents of the application. The workman has given his proper address on the acknowledgement receipt Ex. W-5 and the respondent should have sent the letter to the workman on that address which was not done by the respondent. The workman also reported the matter to police and it is very clear from W-1 the FIR from the Police Station that the workman was beaten in the factory and was stopped on the gate on 27th December, 1980 without any reason so the termination of the workman is not according to the plea taken by the respondent rather he was stopped at the gate due to this dispute between the workman and the supervisor. The respondent should have enquired the matter and settled the matter according to legal way, rather to stop the workman on the gate on next day. So the termination of the workman was illegal and unjustified and the workman is entitled for the reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated the 3rd September, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 2006, dated the 13th September, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-PV-6Lab/9669.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to published the following award of the Presiding Officer, Labour Court, Faridabad in respect of the Dispute between the workmen and the management of M/s Frick India Ltd., 21.5 Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 438 of 1980

Between

SHRI KISHAN SHARMA, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S FRICK
INDIA LTD 21.5 K.M. MATHURA ROAD, FARIDABAD

Present—

Shri S.S. Gupta, for the workman.

Shri S.L. Gupta, for the respondent management.

AWARD

This reference No. 438 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,— vide his order No. ID/FD/147-80/49059, dated 15th September, 1980; under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Shri Kishan Sharma, workman and the management of M/s Frick India Ltd., 21.5 K.M. Mathura Road, Faridabad.

The term of the reference was :—

Whether the termination of services of Shri Shri Kishan Sharma was justified and in order ? If not, to what relief is he entitled ?

The notice was issued to the parties on receipt of reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he joined the services of the respondent on 15th May, 1979 and drawing a salary of Rs. 300 per month. His work and conduct was quite satisfactory. The workman fell sick on 18th May, 1980 and remained under the treatment of ESI upto 7th June, 1980 and when he reported for duty along with fitness certificate the employer refused to take him on duty and thereafter he was not allowed to resume his duty in spite of his repeated attempts. The workman made a complaint to the Labour Inspector but without any result and submitted his demand notice. The termination of the workman, w.e.f. 7th June, 1980 which is illegal and unjustified and against the principles of natural justice. So, he is entitled for the reinstatement with continuity of service and full back wages.

The case of the respondent according to written statement is that the workman was appointed on 15th May, 1979 at a salary of Rs. 300 per month as Carpenter and he was not a permanent workman and his work was not satisfactory. The services of the workman were terminated on 17th May, 1980 while he was quite fit on duty. It was only a false pretext to avoid the receipt of the termination letter which was presented to him on 17th May, 1980 but he refused to take the same. The case is simple termination of a probationer which is quite justified and in order.

On the pleadings of the parties following issues were framed :—

Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on the issues is as under :—

Issue No. 1.—The representative of the respondent argued on this issue that Shri Sundram, Law Officer of the company come with the full file of the claimant and stated before this court as MW-1 that he has brought

the file of the claimant in which the Ex. M-16 is appointment letter of the claimant. He was appointed on probation of six months with a condition to extend the probation period as desired by the management. For the probationer a merit rating form is prepared by the Head of the Department for the period he worked and then it is sent to the personal Department. Ex. M-2 is that form. It bears the signature of Shri Kirpal Singh who was a foreman in charge of the factory. Ex. M-3 was given to the workman for extension of his period, then again merit rating was prepared which is Ex. M-4 and signed by the same Kirpal Singh. The workman was again given the extension, — vide Ex. M-5 for the period of 3 months. Again the merit report was prepared by Shri Kirpal Singh which is Ex. M-6 and on that report letter Ex. M-7 was given to the workman w.c.f. 17th May, 1980 because the work was not satisfactory and he was given three chances to improve his work and the workman has failed to improve up to the satisfaction of the management. The workman refused to receive this letter. The remarks on Ex. M-7 are of Shri Kirpal Singh, Rajinder Singh, clerk of the Personal Department. The witness has further stated that he recognises the signature on Ex. M-7. The copies of the letter is Ex. M-7 for the termination, was also sent by post with forwarding letter Ex. M-8. The respondent also sent the letter Ex. M-9 through registered post. The A.D. M-10 which was received back. The letter received back with the remarks of the postal authorities that the addressee refused to accept the same. The standing order of the respondent is Ex. M-11 in which it is clear that the probationer can be removed from the service. The letter of termination dated 17th May, 1980 Ex. M-7 was presented to the workman but he refused to take the same and now he has taken the plea of illness and produced the fitness certificate of the ESI which is not believable at this stage when the services of the workman terminated on 17th May, 1980. The workman admitted the signature on Ex. M-1, the appointment letter of the workman in which it is stated in para No. 3 that the workman is appointed on probation for a period of six months and it can be extended at the discretion of the management. It is also stated that his services may be terminated without assigning any reasons and without any notice of payment of compensation in lieu thereof. The respondent sent a letter to the workman Ex. M-9, dated 19th May, 1980 about the striking of the name from the organisation and again a registered letter was sent on 8th June, 1980 which is Ex. M-9 stating therein that "despite earlier above letters to you, you have not come to our factory to collect your dues." The document produced in the court are the documents maintained in the factory in routine of the office and they can not be dis-believed. So the workman was removed from the factory because his work was not satisfactory and after having three reports from the incharge of the workman. The workman was removed as he has not improved his work given to him. So, the removal of the workman is justified and in order.

The representative of the workman argued on this issue that as stated by the workman as WW-1 he was employed in the factory on 15th May, 1979 as Carpenter at a salary of Rs. 300 and he was not told about the probation and he was not given any merit rating report from the Incharge. He was also not given the letter Ex. M-2, 4 and 6 and the letter of extension of his probation period. He further argued that the respondent has failed to prove that these letters were issued to him by any way. The respondent should have produced the suitable prove that these letters were issued to the workman. These letters were prepared by the respondent in his own way and not shown to the workman and the workman was permanent employee and he worked for more than one year and he cannot be terminated in a simple way in which they have terminated. The workman fell ill as he has stated in his statement from 18th May, 1980 and came under the treatment of ESI upto 21st May, 1980 and produced the fitness certificate from the ESI dated 7th June, 1980 in the factory which is Ex. W-1 which was not accepted by the respondent. The workman made a complaint to the Labour Inspector Ex. W-2 for refusing the duty by the respondent but there was no result of the complaint and the workman raised this demand notice. The workman was a permanent employee and cannot be terminated in the way in which the respondent has terminated without paying any retrenchment compensation under section 25-F of the Industrial Disputes Act.

After hearing the arguments of both the parties, and going through the file, I am of the view that after admission of the workman Ex. M-1 the appointment letter and letters Ex. M-3 and M-5 for the extension of the period of probation the workman has knowledge of probation and about the un-satisfactory work according to the reports of the incharge and the respondent's allegation that the workman has refused to take the letter dated 17th May, 1980 prove that the workman's conduct that he became ill and took treatment from the ESI and did not report for duty and came to report on 7th June, 1980 when he had the knowledge of letter for the termination of the service of the workman. So, the workman statement that he fell ill and got the treatment from the ESI cannot be believed. He has not stated in the statement that what disease he got in this period. Further the workman has admitted in his cross-examination that address given on Ex-M-9 which is a registered letter sent to the workman for collection of his dues after two other letters from the respondent and when the address was correct then the report of the postal authority is also correct that the addressee has refused to accept this letter. This shows that the claimant has avoided this letter for the reason known to him and presumption goes against him. The respondent has produced the Certified Standing order of the company in which clause four for the classification of the worker and para 'B' of clause 4 designation of the workman given and it is given if a workman continues in employment on expiry of 13 months of service, he shall be deemed to have been automatically confirmed in his appointment. So, the workman is not confirmed workman and he was rightly terminated by the management. So, the issue is decided in favour of the management and against the workman and the workman's not entitled for any relief.

This be read in answer to this reference.

Dated the 2nd September, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-PV-6Lab/9670.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to published the following award of the Presiding Officer, Labour Court, Faridabad in respect of the Dispute between the workman and the management of M/s Frick India Ltd. 21.5 Main Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD.

Reference No. 308 of 1981.

Between

SHRI HARI NANDAN PARSAD, WORKMAN AND THE MANAGEMENT OF M/S FRICK
INDIA LIMITED, 21.5, MAIN MATHURA ROAD, FARIDABAD.

Shri Mohit Kumar Bhdari, for the workman.
Shri S.L. Gupta, for the respondent-management.

AWARD

This reference No. 308 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,— vide his order No. ID/FD/219/81/59483, dated 11th December, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Hari Nandan Parsad, workman and the respondent management of M/s Frick India Limited, 21-5 Main Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of service of Shri Hari Nandan Parsad was justified and in order? If not, to what relief is he entitled?

On receiving this reference notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman was appointed on 11th September, 1980 as a turner at a salary of Rs. 400 per month. The workman was to remain on probation for a period of six months i.e., from 11th September, 1980 to 10th March, 1981 and on 6th March, 1981 the workman was given a letter from the management for extension the period of probation upto 10th June, 1981 for three months. The workman was terminated on 27th August, 1981 without assigning any reason. The respondent could not terminate the services of the workman during the period of probation without assigning any reason and not after that period. The termination is by way of punishment as the workman was issued warning letters on 5th August, 1981. The workman was never given any opportunity to explain and no domestic enquiry was held. The para No. 3 of the appointment letter is illegal and can not be sustained in law. It is a piece of bad legislation by the respondent. The termination was illegal so the workman is entitled for the reinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that on 6th March, 1981 the workman was given a letter from the respondent whereby the workman was informed that his probation was being extended upto 10th June, 1981. It was not a warning but a caution to the workman to improve his work as his work was not found satisfactory. The probation period of the workman was further extended,—vide letter 7th June, 1981 upto 10th September, 1981. The termination being on 27th August, 1981 was during the period of probation. This is also in consonance with the Certified Standing Order of the Company. The warning dated 5th August, 1981 to the claimant does in no way makes the termination order as punitive. He was never issued any charge-sheet so there was no question of holding any domestic enquiry. The terms of employment in the appointment letter is in consonance with the Certified Standing Orders of the company and the entire case has been dealt with in accordance with the certified Standing order of the company. So, the termination is legal and in accordance with the Industrial Disputes Act, 1947 and in keeping with the principles of natural justice. So, the termination is justified and the reference may be rejected.

On the pleadings of the parties, following issue was framed:—

1. Whether the termination of services of Shri Hari Nandan Parsad was justified and in order? If not, to what relief is he entitled?

My findings on the issue is as under:—

Issue No. 1.—The representative of the respondent argued on this issue that as stated by Shri S. Sundram Law Officer of the Company as MW-1 that the appointment letter Ex-M-1 was given to the workman by the personal officer and he was appointed on probation from 11th September, 1980 for six month at a salary of Rs. 475 per month. The workman signed on Ex.M-1 at mark 'A'. The personal department received the merit rating report of the workman dated 3rd March, 1981 which is Ex. M-2 on which the General Manager ordered to extend the period for three months and Ex. M-3 extension letter was issued to the workman who has signed at mark "A". After this Ex.M-4 meriting report of the department was received in the Personal Department and on that report the General Manager further extended the probation period for 3 months and the letter Ex. M-5 was issued to the workman and the workman signed at mark "A" on 7th June, 1981. The work of the workman was not satisfactory upto the mark then a letter of warning was issued by the respondent which is Ex.M-6, dated 5th August, 1981 in which it is stated that as reported by the incharge that "You are not attending to your work properly and that after putting the job on machine you sit and gossip with your fellow workers". Please note that if you do not take your work seriously we will be compelled to take disciplinary action against you." He further argued that the workman received this letter and signed at mark "A" in token of that receipt. Then a merit rating report Ex.M-7 was sent by the Department and recommended for the termination of the services of the workman and according to this report the General Manager terminated the services of the workman,—vide Ex.M-8 and the workman received the termination letter and signed the same at Mark "A". He further argued that the workman was terminated according to the Certified Standing Orders of the company which is Ex. M-9 and according to clause 4-B of the standing orders a Probationer is a workman who is provisionally employed to fill a vacancy in a permanent post for a period of six month but it may be extended by a period of 3 months at the discretion of the management. If the management considers it necessary to further adjudge the work and merits of the workman, it may further extend the probationary period. The maximum probationary period shall in no case extend beyond one year, and if a workman continues in employment on expiry of 13 months of service he shall be deemed to have been automatically confirmed in his appointment. The action against the workman was taken according to the terms and conditions of the appointment letter which is Ex. M-1 which is admitted by the workman in his statement that he received and signed the same,—vide para No. 3 of the appointment letter. The workman was appointed on a probation of six months and it is also stated in the para that it can be extended at the discretion of the management. During the period of probation your services may be terminated without assigning any reasons and without any notice of payment of compensation in lieu thereof. He further argued that the workman was appointed on probation as he has admitted in his statement as WW-1 where he has stated that he was appointed on probation for six months and he received the appointment letter and the extension letter Ex M-3 and signed the same. This shows that the workman admits the fact that he was appointed on probation. The workman has admitted in his statement that he received the termination letter Ex. M-8. The workman has refused to admit the signatures on Ex.M-5 and M-6 in his cross examination which he wrongly denied his signatures. The respondent made an application for handwriting expert on 14th May, 1981 which was allowed and the Hand Writing Expert came in the witness box to prove the signature of the workman as MW-2 Shri Som Nath Aggarwal, Handwriting and Fingers Expert, who has proved the documents filed in the court which are Ex.M-10 to M-13 that the signatures on documents Ex. M-5 and M-6 are of the workman. After the handwriting expert report and findings which cannot be dis-believed. It is clear that the workman has wrongly denied the signatures on the documents in the statement. Ex. M-5 is a letter for extension of period dated 7th June, 1981. The probation period was extended upto 10 September, 1981 and Ex.M-6 is a warning letter dated 5th August, 1981, and the statement of the workman cannot be believed as he has stated falsely before this Court because the workman has stated in his claim statement in para No. 6 that the termination has been by way of punishment as the workman was issued warning letter on 5th August, 1981. When the workman has admitted the fact in his claim statement that the letter of warning Ex. M-6 was issued to the workman dated 5th August, 1981 then his denial in the Court cannot be believed. The workman has admitted the fact of appointment on probation by way of documents produced in the court. He has further stated that the workman has admitted signatures on all the documents then he cannot say that he was terminated illegally by the respondent. The workman was terminated by the respondent according to terms and conditions of the appointment letter in accordance with the Certified Standing Orders of the company which are applicable to the company and which are Ex. M-9 so the order of termination of the workman is justified and in order.

The representative of the workman argued on this issue that the workman was appointed on probation stated by the workman in his statement on 11th September, 1980 as a turner at a salary of Rs. 455 per month for six months and he was given three months extension and after that he received no letter of extension and he worked for 12 months in the factory. He received no notice or charge sheet for removing from the service. He has specifically denied in his statement that warning letter Ex. M-6 was not given to the workman and no explanation letter was given to the workman. So after one year of service the workman became a permanent employee of the factory as he has completed 240 days according to Industrial Disputes Act and the become a permanent employee and the workman was entitled for notice pay and retrenchment compensation which was not given to the workman and the termination is illegal and without any justification. So the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file I am of the view that the respondent has fully proved the case by producing all the documents which are admitted by the workman in his claim statement or in the statement in the court. The workman denied the signature on two documents Ex. M-5 and M-6 which was proved by the hand writing expert cannot be believed, and the workman has stated falsely in the Court. The workman has admitted the signature on the letter in the claim statement in para No. 6 and denied in the statement in the court shows that the workman is stating falsely and cannot be believed. The respondent has terminated the services of the workman according to the terms and condition of the appointment letter and in accordance with the Certified Standing Orders of the company and there is nothing unjustified in the order. So the workman is not entitled for any relief and the issue is decided in favour of the respondent and against the workman.

This be read in answer to this reference:

Dated 3rd September, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

Endst. No. 2009, dated 13th September, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

The 12th October, 1982

No. 9(1)-82-PV-6Lab/9671.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Frick India Ltd., Main Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 385 of 1981

between

SHRI MAHIPAL SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S FRICK INDIA LIMITED, MAIN MATHURA ROAD, FARIDABAD

Shri Mohit Kumar Bhandari, for the workman.

Shri S. L. Gupta, for the respondent management.

AWARD

This reference No. 385 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/228/81/61276, dated 23rd December, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Mahipal Singh, workman and the management of M/s Frick India Limited, Main Mathura Road, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Mahipal Singh was justified and in order? If not to what relief is he entitled?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman was appointed with the respondent on 23rd September, 1980 as Hammer Man and was drawing a salary of Rs. 300 per month. The respondent stopped the workman on 8th September, 1981 without assigning any reason. The workman complained to the Labour Inspector but the respondent refused to take him on duty and the workman was advised to give the demand notice. The work and conduct of the workman was quite

satisfactory throughout and the termination of the workman has been done in contravention of the Industrial Disputes Act and the workman is entitled for the reinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that the workman was appointed on 23rd September, 1980 at a monthly salary of Rs. 290 p.m. on probation for a period of six months, in accordance with the Certified standing orders. The performance of the workman was not upto the mark. His period of probation was extended for 3 months,—vide letter, dated 20th March, 1981 but the workman did not improve his work and the respondent was compelled to extend his probation for 3 months,—vide their letter, dated 19th June, 1981 which was duly served on him. The services of the workman was terminated on 6th September, 1981 and the termination letter was sent to him by registered A.D. post. The claimant made a complaint to the Labour Inspector and the respondent apprised all the contents before the Labour Inspector and was convinced. The work of the claimant was never been satisfactory during the period of service and termination of the workman is in accordance with the Certified Standing Orders of the Company and Industrial Disputes Act. So there is justification in the order of termination and the reference be rejected.

On the pleadings of the parties, the following issue was framed :—

- (1) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on the issues is as under :

Issue No. 1.—The representative of the respondent argued on this issue that as stated by the respondent witness Shri S. Sundram the workman given the appointment letter Exhibit M-1 for six months probation. The workman signed at mark 'A' in token of receipt. The respondent issued another letter for extension of period of probation which is Exhibit M-3 on the recommendation of the incharge of merit rating report which is Exhibit M-2. The workman received a letter Exhibit M-3 for the period of three months and signed at mark 'A'. The personal Department received another merit rating report of the workman which Exhibit M-4 and recommended for extension of probation of three months. Then the respondent again extended the period of extension,—vide letter Exhibit M-5. After this extension of probation the personal department received another merit rating report which Exhibit M-6 in which the incharge has recommended to remove this workman as his work is not satisfactory and on this report the respondent terminated the services of the workman.—vide Exhibit M-7 and the workman was informed by a registered letter. Certified Standing Order are applicable in the company and copy of the same is Exhibit M-8. He further argued that the respondent gave two chances of the workman to improve his work but the workman failed to improve his work and the services of the workman was terminated according to the terms and conditions of the appointment letter Exhibit M-1 and in accordance with the Certified Standing Orders of the Company which Exhibit M-8. In the Standing order clause 4-B is clear for the probationer where it is stated that the probation is a workman who is provisionally employed to fill a vacancy in a permanent post and has not been confirmed as permanent in accordance with these Standing Orders. Ordinarily the period of probation shall be six months but it may be extended by a period of 3 months at the discretion of the Management. If the management considers it necessary to further adjudge the work and merits of the workman it may further extend the probationary period. The maximum probation period shall, however in no case extend beyond one year. If a permanent workman is employed as a probationer in a new post or vacancy he may at any time during the probation period be reverted to his previous permanent post. If a workman continues in employment on expiry of 13 months of service he shall be deemed to have been automatically confirmed" and in para No. 3 of the appointment letter it is clear that the workman is appointed for a period of six months and it is stated in para that it can be extended at the discretion of the management. During this period the services may be terminated without any reason and payment of compensation in lieu thereof. So the workman was terminated according to the terms and conditions of the appointment letter and in accordance with the standing order of the company and the workman was rightly terminated and there is nothing wrong in the termination order. He further argued that the workman has admitted this fact as WW-1 that he received the appointment letter that he joined the services and signed the same and was appointed on probation for six months but he denied to receive the extension letter after finishing the said period. After admission of signatures of Exhibit M-1 it is clear that the workman was employed on probation and the workman has denied the signatures on Exhibit M-3 and M-5 which cannot be dis-believed as the signatures on M-1 at Mark 'A' resembles with the signatures on Exhibit M-3 and M-5 at Mark 'A' so the workman has stated wrongly that he did not receive and sign the extension letters as these letters were given to the workman and he has received the same by signing them. So the order of termination was legal and justified.

The representative of the workman argued on this issue that as stated by Shri Mahi Pal Singh, as WW-1 he was appointed on probation and he received the appointment letter Exhibit M-1. He was appointed on probation of six months and after finishing this period he was given no letter of extension and he does not know about the merit report of the workman sent by the incharge of the respondent company and he was working properly upto the mark and satisfaction of the respondent and was terminated without assigning any reason on 6th September, 1981. The workman did not receive the letter Exhibit M-7 of termination. The workman was terminated illegally and he is entitled for reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has fully prove their case and the workman was removed under the terms and conditions of the appointment letter Exhibit M-1 and in accordance with the Certified Standing Orders of the company which is legal force. The workman has failed to prove by any document or evidence that he was removed illegally. He has come as his own witness and there is no support or corroboration of the statement of the workman by any way. He can call his co-workman to prove this fact but he has failed. He has stated nothing in the statement except that he was appointed on probation and received no other letters from the management and removed without any reason. The statement of the workman without any corroboration and support cannot be believed as the signatures of the workman resembles on Exhibit M-3 and M-5 with the signatures on Exhibits M-1 at mark "A" which he has admitted that he signed the appointment letter Exhibit M-1 at Mark A. It means that the workman is stating falsely that he did not receive extension letter and the respondent wrongly terminated the services of the workman in accordance with the terms and conditions of the appointment letter and Certified Standing Orders. So the workman is not entitled for any relief and this issue is decided in favour of the respondent against the workman.

This be read in answer to this reference.

Dated the 3rd September, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 2010, dated 13th September, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-PV-6 Lab-9675.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the Dispute between the workman and the management of M/s. S.J. Knitting and Finishing Mills, Private Limited, 13/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 277 of 1981

between

SMT. KAYANI MAUBAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. S.J. KNITTING AND FINISHING MILLS, PRIVATE LIMITED, 13/7 MATHURA ROAD, FARIDABAD

Shri Mohit Kumar Bhandari, for the workman.

Shri B.R. Grover, for the respondent management.

AWARD

This reference No. 277 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD//135/81/52134, dated 21st October, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Kayani Maubal, work woman and the management of M/s. S.J. Knitting and Finishing Mills, Private Limited, 13/7 Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of service of Smt. Kayani Maubal was justified and in order ? If not, to what relief is she entitled ?

The notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the work woman according to her demand notice and claim statement is that she worked with the respondent for the last 3 years and her services were terminated by the respondent. She raised Industrial Disputes which was referred to the Labour Court,—vide reference No. 526 of 1980. She is an illiterate woman and only knows Bengali and his representative mis-guided her in that reference and got signed a settlement before this Court on 5th March, 1981 regarding the reinstatement on duty. But when she reported for duty she was

appointed afresh from 18th March, 1981 at Rs. 350 per month. The job given to the work-woman was of permanent nature and she worked with quite satisfaction of the management but inspite of her satisfactory work the respondent terminated her services being prejudice from the previous reference and terminated the services on 18th June, 1981 without giving any notice and reason for her termination so the work woman is entitled for reinstatement with back wages and continuity of service.

The case of the respondent according to written statement is that the Industrial Dispute was raised by the work-woman which was settled before this court and according to the settlement she was employed in the factory. According to the settlement she was allowed to join the service afresh and so she was given afresh job according to the settlement for two months and after the completion of two months her services were terminated according to the appointment letter.

On the pleadings of the parties, following issue was framed :—

- (1) Whether the termination of services of the work-woman was justified and in order ? If not, to what relief is she entitled ?

My findings on the issue is as under :

Issue No. 1.—The representative of the respondent argued on this issue that as stated by Shri R.N. Sharda Chief Security Officer as MW-1 that the work-woman was appointed in March, 1981 for two months and appointment letter M-2 was given to her. She received the same after signing it. The work woman was removed after two months according to appointment letter Ex. M-1. He further argued that as admitted by the respondent witness MW-1 there was a previous reference in respect of the work-woman which was settled in the court that the work-woman should be taken on duty afresh and the work-woman was taken on duty according to the settlement in the court and removed after finishing the period given in the appointment letter. So the work-woman is not entitled for any relief.

The representative of the work-woman argued on this issue that as stated by the work-woman WW-1 she was working in the factory before 1st April, 1979 in the painting Department and worked as Painter. She was removed from service on 6th February, 1980 previously for which she raised the industrial dispute which was referred to this court and settled. She was an illiterate lady and only knows Bengali not Hindi and English. The representative mis-guided her and got signed on the settlement she was not given any compensation or back wages on the previous settlement and only given the service which she joined on 18th March, 1981 and when she received the appointment letter she came in the court and showed the appointment letter to the Presiding Officer who told her that they are not removing her from the service and do her job. But the respondent removed the services of the work-woman on 18th June, 1981 which is illegal. He further argued that the respondent has produced no copy of settlement or award in the court to show that there was some settlement between the parties and according to that settlement she was appointed vide Ex. M-1 she was appointed on 18th March, 1981 and removed on 18th June, 1981 after three months whereas according to the appointment letter Ex. M-1 she was appointed for two months. The respondent witness Shri R.N. Sharda has admitted in his cross examination that in the award or in the settlement there was no period specified for the appointment of the work-woman. The respondent has wrongly appointed her for the specific period of two months. When there was no period specified in the settlement or award. The settlement was only to give afresh appointment for avoiding the back wages of the work-women. The respondent witness further admitted in his cross examination that she worked as helper and Assistant Printer. He has further admitted that the Printing work is still going on in the factory. When the work woman was working as Assistant Printer who is still going on in the factory there was no reason to remove the work woman. She was only removed due to the prejudice by the previous reference and the work woman is entitled for the reinstatement with back wages and continuity of service.

After hearing the arguments of both the parties, and going through the file, I am of the view that the respondent has failed to justify the removal order as they have not produced any copy of the settlement or award in this court. I call the whole previous reference and see the reference and the award of the work-woman. In the settlement or the award there is no specific period is given of the work-woman as they appointed for the specific period of two months. When there was no specific period of service they should not have appointed her for a specific period. The settlement for afresh appointment was due to avoid the back wages of the work-woman which the respondent gained through that settlement but after that settlement it was not clear from settlement or award that she should be appointed for a specific period. The respondent has issued a wrong appointment order and removed the work woman. It is admitted fact that she worked as Assistant Printer and work of Printing is not closed and she could continue as Assistant Printer in the factory. So the order of termination is unjustified and the work-woman is entitled for the reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated the 3rd September, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad,

Endorsement No. _____, dated _____

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-P-6Lab./9886.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Gedore Tools (India) Pvt. Ltd., Unit II, N.I.T., Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 193/1978

between

SHRI S. S. ARORA WORKMAN AND THE MANAGEMENT OF M/S GEDORE TOOLS (INDIA),
PVT. LTD., UNIT II, N.I.T., FARIDABAD.

Present.—Shri R. N. Roy, for the workman.

Shri S. S. Sethi, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri S. S. Arora and the management of M/s Gedore Tools (India) Pvt. Ltd., Unit II, N.I.T., Faridabad, by order No. FD/ID/653-77/31053, dated 5th July, 1978, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri S. S. Arora was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my learned predecessor,—*vide* order dated:—

- (1) Whether principles of natural justice have been violated in the enquiry, and/or the domestic enquiry is vitiated?
- (2) Whether Merchantile Employees Association is competent to raise the demand?
- (3) Whether termination of services of the workman was justified and in order?
- (4) Whether the dismissal order in view of management's letter dated 18th August, 1977 marked A is justified?

After trial issue No. 1 was decided by my order dated 13th January, 1982 in favour of the management and issue No. 2 by the same order in favour of the workman.

Issue No. 3 & 4.—The management examined Shri S. N. Bangia, Personnel Manager as MW-2 and Shri S. K. Mehendiratta as MW-3. The workman examined himself as WW-2. Arguments were heard.

MW-2 deposed that he was senior personnel manager and the concerned workman worked in his plant. Domestic enquiry was held against the concerned workman. On the report of enquiry Shri K. D. Bakshi Executive Officer passed order-exhibit M-15. The order was received by him for delivery to the concerned workman Shri S. S. Arora who was under suspension. On 19th August, 1977 when Shri Arora came to the factory, the head time-keeper Shri S. K. Mehendiratta offered Exhibit M-15 to him but he refused to receive the same. He further deposed that a person not on duty, and interested in his entry into factory, his entry was recorded in the gate register. He had brought the gate register from 1st May, 1977 to 10th December, 1977. Photo copy of the relevant page was Exhibit M-18. Copy of the report of the head time-keeper was Exhibit M-19. Letter Exhibit M-15 thereafter was sent by the U.P.C. and registered post on 19th August, 1977. Postal receipt of U.P.C. was Exhibit M-20 and Postal receipt of registered letter was Exhibit M-21. The registered letter was received back undelivered and was Exhibit M-22, Shri Arora was in the habit of not receiving the registered letter but he received letters sent through U.P.C. Such return registered envelopes were Exhibit M-23 to M-26. He

was dismissed from the service on 26th August, 1977. The original of the dismissal letter Exhibit M-16 was sent to him by registered post. It was also returned back and was Exhibit M-27. Other letters sent to him were Exhibit M-28 to M-30. Earlier to it the charge-sheet copy Exhibit M-31 was issued to him and punishment of four days suspension was given. In cross-examination, he replied that letter Exhibit W-4 was given to the workman by the management. MW-3 deposed that Exhibit M-19 was his report. It was given to the personnel manager because Shri Arora had refused to receive the letter Exhibit M-19 on 19th August, 1977. The report was correct. In cross-examination, he replied that the workman was under suspension in August, 1977. A suspended workman was to report for attendance at 10.00 A.M. but some came earlier or thereafter. When suspended workman reported for attendance they are offered letter if any. Exhibit M-15 was offered to the workman in his office and not at gate.

The concerned workman deposed that he was given charge-sheet on 14th May, 1977, and was suspended. Again said that he received that on 16th May, 1977. He used to go to the factory gate for recording his attendance. He was not called by the head time-keeper on 18th July, 1977 nor he was offered any letter. Postman did not deliver letters at his house. He had to collect the same from the place, the postman informed him. He did not receive letter dated 18th July, 1977. He had written letter to the management on this account, copy of which was Ex. W-5 and postal receipt W-6 and A.D. Card Ex. W-7. In cross-examination, he replied that he had gone to the factory gate on 19th August, 1977. His address from May, 1977 to September, 1977 was 187-A, Jawahar Colony, Nagla Road, N.I.T., Faridabad. He admitted that 187-A/Jawahar Colony near Saran village N.I.T. Faridabad was his correct address. He never received a letter on this address. He had received two registered and 2-3 U.P.C. letters from the management. He had gone to East India Company to bring his letters. On those letters his address was C/o East India Company. The cover of letter which he received through East India Company were Exhibit W-8 to Exhibit W-10. He received his letters C/o Shri Beli Ram tenant. The postman used to inform him to collect his letters from the tenant. He denied the suggestion that he had returned registered letters and accept only U.P.C. letters. He admitted his signature on Exhibit M-33 and Exhibit M-32. He admitted that he had signed in the Security register on 19th August, 1977, copy of which was Exhibit M-18. His signatures appeared on it. He denied the suggestion that he was offered letter by Shri S.K. Mahendiratta on that date. He did not remember the date when he learnt about letter dated 18th July, 1977.

The learned representative for the management argued that workman was found guilty of charges, disobedience of lawful order, loitering during the duty hours, refusal to do work, rude and misbehaviour with senior engineer. His previous record was also not good. He cited 1965-II-LLJ-page 162, 1980-I-LLJ-page 295, 1962-I-LLJ-page 420, 1970-II-LLJ-page 56, 1955-I-LLJ-page 450 and 1959-II-LLJ-page 224. On the other hand, the learned representative of the workman argued that the workman was asked to perform duty different from his designation. He was asked to load and unload barrel which was a job of a coolie whereas the workman was an operator. The action of the management was *mala fide*. He further argued that workman was asked to give undertaking so that lenient view could be taken against him. The management, therefore, gave him punishment disproportionate to the misconduct. He cited 1979-I-LLJ-page 60 in this respect. The learned representative for the management argued that the work of loading of trally into barrel was one of the operations. There was no physical loading or unloading. It was description of the job.

As I have earlier mentioned that domestic enquiry and finding was held by the management proper while deciding issue No. 1. Now it remain to be seen if the punishment was disproportionate. It was correct that the management had issued letter Exhibit M-15 to the workman in which it was given that the management had decided to take lenient view of the matter provided he gave an undertaking in the enclosed form by 25th August, 1977. In case this undertaking is not received within stipulated time, the management will be constrained to take such other action as it may deem fit in the circumstance. The workman contended that he did not receive letter although the same was sent to him by registered post and U.P.C. post. The management had produced on record number of letters received back undelivered although none of the U.P.C. letters was so received.

In 1965-II-LLJ-page 162, the matter about non-furnishing undertaking as required by the management and dismissal of workman went up to the Hon'ble Supreme Court. It was held that "The Charge in the notice of 15 December was that the workman had been going slow from 27 November and they were asked to give an undertaking to improve and the respondent was apparently willing to overlook the earlier lapse. Even assuming that the demand of an undertaking was unjustified, it does appear that the attitude of the workmen was that they would do no better; and in those circumstances they were discharged on 17th December, 1960 on the basis of misconduct has been held proved by the Tribunal and in our opinion that decision of the Tribunal cannot be said to be wrong. In the circumstances, the tribunal was justified in coming to the conclusion that the discharge was fully justified."

In 1980-I-LLJ-page 295, a typist had refused to type out the delivery challan and had told that "It is not my work and I will not do it." and the enquiry was held and after acceptance of the findings, the management asked the workman to apologise but he declined and order of dismissal was passed. It was held that "Any person who is disobedient becomes insubordinate and his conduct amounts to insubordination. Therefore, where a workman disobeys a lawful order, he can be said to be guilty of insubordination and it needs hardly to be stated that a misconduct of disobedience and insubordination would also amount to indiscipline. There is no difficulty in holding, on the finding recovered by the Labour Court, that it was part of the workman's duty to type the delivery challans and his declining to do so would clearly amount to insubordination and indiscipline."

It cannot be said that disciplinary proceedings for misconduct can never be taken against an employee on a charge of insubordination arising out of a solitary instance of a lawful order and that for sustaining such charge of insubordination several repeated instances of disobedience are necessary.

The agreement made on behalf of the workman that some other punishment should have been awarded in lieu of dismissal would not entitle the Labour Court or interfered with the order of punishment. As pointed out in Hind Construction & Engineering Co's case (1965-I-LLJ. 462), the Tribunal is not required to consider the propriety or adequacy of punishment or whether it is excessive or too severe. In case the punishment is shockingly disproportionate, regard being had to the particular conduct of the workman, the test is that no reasonable employer will ever impose such punishment in like circumstances and then alone the Tribunal will be entitled to treat the punishment as amounting to victimisation or unfair labour practice. In the instant case, the Labour Court has nowhere said that for such misconduct, no other employer would have imposed the punishment of dismissal. Indeed why the Labour Court took the view that the punishment is shockingly disproportionate is not to be found in the order."

In 1959-I-LLJ-page 450, it was held that "Misconduct workman absenting himself frequently without permission. Another workman found almost in the habit of loitering outside his place of work without permission of his departmental head and in spite of previous warnings—Such workmen put on indefinite suspension—Tribunal after finding the workmen guilty of the charges alleged against them, directing reinstatement of such workmen—The fact that the concerned workmen were office-bearers of the union, held, immaterial in awarding punishment—relief of reinstatement granted, in the circumstances, held, unjustified and unwarranted."

I do not find from the record that the action was motivated by *mala fide* reasons. The workman was engaged by the management to perform his duties by remaining into discipline here there is chain of operations in manufacturing process refusal to work by one operator in the chain resulted into dislocation of manufacturing process. It would have been proper for the workman to repent for his action and given undertaking asked for. I do not find now any reason to interfere in the action taken by the management. Therefore, I pass my award that the workman was not entitled to any relief.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 6th September, 1982.

Endorsement No. 980, dated 14th September, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section-15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad,

No. 9(1) 82-PV-6 Lab/9887.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Super Steel Forgings, Plot No. 15, Sector-4, Faridabad.

BEFORE SHRI M. C. BHARADWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 115/1981

between

SHRI BHAJAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. SUPER STEEL FORGINGS,
PLOT NO. 15, SECTOR-4, FARIDABAD

Present.— Shri Darshan Singh, for the workman.
Shri K.P. Agrawal, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Bhajan Lal and the management of M/s. Super Steel Forgings, Plot No. 15, Sector-4, Faridabad, by order No. ID/FD/5/81/21 06, dated 4th April, 1981, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Bhajan Lal was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order dated 22nd June, 1981 :—

- (1) Whether the domestic enquiry is fair and proper ?
- (2) Whether the termination of services of Shri Bhajan Lal was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management. The management examined Shri K. P. Agrawal, Management Consultant as MW-1 and Shri I. C. Singal, Partner of the management as MW-2. The workman examined himself as WW-1. Arguments were heard. My finding on issuewise is as under :—

Issue No. 1.—MW-1 deposed that he had conducted enquiry in charge-sheet Ex. M-1. Copy of proceeding was Ex. M-2 which was in his hand. The workman did not participated in the enquiry despite repeated opportunities. The management produced 21 documents in the enquiry which were Ex. M-3 to M-23. He submitted his enquiry report and the basis of evidence recorded by him: It was Ex. M-24. In cross-examination, he admitted that he was Legal Adviser of the company. He denied the suggestion that he had drafted charge-sheet. He had attended conciliation proceedings. He had no postal receipt or A.D. receipt of sending charge-sheet. He had received Ex. M-15 along with charge-sheet before starting enquiry. He had received Ex. W-1 on 21st September, 1980 from the workman. He did not issue any notice in the press for non-participation of the workman in the enquiry. Shri M.C. Chopra was management's representative in the enquiry. He had produced Ex. M-3 to 15 in his statement. Documents Ex. M-16 to M-21 were produced by Shri Jagir Singh witness Ex. M. 4 in his statement. He had written letter Ex. M-18 and M-21 to the workman by registered post. A.D. Cards were received by him. Copy of postal was Ex. M-19 and A.D. Card was Ex. M-20. He had admitted that the workman had submitted his demand notice dated 9th August, 1980 which was filed being premature. He again submitted demand notice dated 4th November, 1980 on which conciliation was held. He did not supply charge-sheet to the workman before the Conciliation Officer. He had only submitted his comments Ex. M-25 to the Conciliation Officer. MW-2 deposed that the workman refused to receive charge-sheet Ex. M-1. It was sent by registered post. Domestic enquiry was held. Shri Chopra was management's representative in the enquiry. In cross-examination, he stated that charge-sheet Ex. M-1 was issued by the Personnel Manager.

WW-1 deposed that he received charge-sheet Ex. M-1 by registered post. He had given his reply,—vide Ex. M-14. He went several times for enquiry but he was not allowed to enter in the factory. He did not take any complaint to the Labour Authorities for not allowing into the factory for enquiry.

The learned representative for the management argued that the notice of enquiry was received by the workman but he did not attend the domestic enquiry. He was also informed again by registered post and verbally but he did not associate in the enquiry. In this circumstance he asserted that the enquiry was held *ex parte*. On the other hand, the learned representative of the workman argued that no charge-sheet was given to the workman. *Ex parte* enquiry held against was denial of principles of natural justice to the workman.

I have gone through the enquiry file and find that the enquiry was fixed for 17th September, 1980. Intimation was sent by registered A.D. post to the workman. A.D. card was not received on that day nor the workman was present. Therefore the enquiry was adjourned to 26th September, 1980 and another letter by registered post was sent. It is in the proceeding dated 26th September, 1980 that again registered letter was sent to him for this date and enquiry officer intimated him verbally of the date when he came to deliver him a letter A.D. card for 17th September, 1980 was also received. The letter was delivered to the workman on 12th September, 1980 i.e. well before first date of enquiry. The enquiry officer recorded statement of Shri N.C. Chopra, Personnel Officer, as MW-1 Shri V.N. Kapoor Time Keeper as MW-2, Shri V.K. Rattan Foreman, as MW-3, Shri Jagbir Singh, as MW-4 and Shri Bir Singh Security incharge as MW-5. The letter of Shri Bhajan Lal referred in the enquiry proceeding was received by the Enquiry Officer on 21st September, 1980 in which he stated that the letter of enquiry dated 17th September, 1980 was received by him. He had alleged that the Enquiry Officer was harrasing him because his case has been referred by the Labour Department to Chandigarh. It was also written that no correspondence should be made with him because he will reply every thing in a court of law. In this circumstance, I find that the contention that the workman had not received intimation of the enquiry was incorrect. It was admitted by the workman in his cross-examination that he had received charge-sheet Ex. M-1 which was sent by registered A.D. post. The learned representative of the management cited 1978-Lab.-I.C.-1335. In which it was held that principles of natural justice require that notice of a proposed enquiry to be held should be given to the concerned person. They do not require that even after giving notice if the concerned person remains absent, the enquiry should not be held in the absence. Therefore, the evidence in the enquiry file leads to infer that the workman had relied upon to the proceeding of the dispute in court. He deliberately absented from the domestic enquiry. Therefore, the enquiry could not be termed as held against the principles of natural justice. The enquiry is proper and finding was based upon the evidence recorded during the enquiry. Therefore, I find this issue in favour of the management.

Issue No. 2.—MW-2 deposed that the workman had submitted application form Ex. M-27 for the post of Turner-cum-Maintenance Fitter. It is signed by him as well by the workman. Apponintment letter was

Ex. M-3 which was also signed by both of them. The workman used to work as turner-cum-maintenance fitter as the exigencies of work demanded. He had received report Ex. M-24 on which the final order was passed, copy of which was Ex. M-27. Copy of standing order was Ex. M-17. In cross-examination he replied that there were about 100 workers in the factory at that time. There were 11 partners in the company. Final order was passed by the three partners in consultation of one another. They had readover the enquiry report and Shri I.C. Singal, Joti Parshad and Sadhu Ram had made consultation before passing the orders. He had received Ex. W-4 and W-5. He had asked the workman to work as Turner in the tool room on 6th August, 1980. He had already worked there. He refused to do the work. The workman was issued Ex. M-5 but he still refused to do the work as turner. The concerned workman deposed that on 2nd December, 1974 he was appointed as Turner-cum-fitter and he received Ex. W-3 designation letter. He was given duty of senior maintenance fitter. He also worked as fitter in the past. The work of fitter was different from that of turner. He had sent letters Ex. W-1, 4 to 9 to the management. He had received Ex. W-10 and W-10 from the Government. Postal receipt and A.D. Cards were Ex. W-12 to W-21. His service was terminated on 8th August, 1980. He was a member of the union. Manager had asked him to work on Lathe. He had also met the partner who also asked him to work on Lathe. Report of Conciliation Officer was Ex. W-22. He was not issued any show cause notice. He admitted his signature on Ex. M-3. He admitted that prior to this company he worked as turner-cum-fitter in some other factory. He admitted that he received Ex. M-4 and M-5. He denied that he had refused to receive Ex. M-6. He admitted that his demand notice dated 9th August, 1980 was rejected being pre-mature. He had received letter Ex. M-28. He had received termination letter. He admitted that he had submitted second demand notice dated 4th November, 1980. The name of union was AITUC. He did not know about the name of the union fully. He never attended the meeting of the union. He used to give subscription to the Union. He denied that he had refused to do work as turner.

The learned representative for the management argued that the workman was appointed as turner-cum-fitter and he performed both duties. He refused to work as fitter after his designation as senior maintenance fitter. Refusal to do work amounted to major mis-conduct. Therefore his service was rightly terminated after holding domestic enquiry. On the other hand, learned representative for the workmen argued that the workman was promoted and there was change of designation. It was breach of contract to work as fitter. It was his demotion. He argued that it was change of condition of service as given 9-A section of the Industrial Disputes Act, 1947. He cited 1973-Lab. I.C. page 233, 1971-Lab. I.C. page 504, and page 784, 1975-Lab. I.C. page 1429, 1972 Lab. I.C. page 1126, and 1979 Lab. page 186.

I have gone through the documents and find that the workman was appointed as turner-cum-maintenance fitter,—vide Ex. M-3. The workman was designated as Senior maintenance fitter, and was placed in higher grade with consolidated salary as a result of a settlement dated 9th August, 1978. According to the transfer order Ex. M-6 he was sent to Tool Rooms as Turner. There was no mention of change in his wages. In the claim statement, the workman has stated that the management had changed his designation and job as turner for which he refused to work. He was active member of the mill committee. Therefore he was victimised. In written statement, the management had given that the workman was transferred to Tool Room to work as turner without any change of any emoluments but he refused to work as turner. The great emphasis was laid by the representative of the workman on Section 9-A that no notice of change of condition of service was given by the management. Section 9-A stated, "Notice of Change—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—" The Fourth Schedule contains 11 items and the learned representative drew attention to item 7 and 8 for the present case. I fear that the provision could be hardly attractive to the case was neither classification by grade or withdrawal of any customary concession or privilege or change in the usage. There was no re-fixation, nor there was any withdrawal of concession etc. There was no reduction or change in emoluments of workman. The ruling cited on behalf of the workman in 1971 Lab. I.C. page 504 was a case where employer unable to retain employee in same position offering him employment at reduced wages. In the present case, there was no deduction in the wages. In 1973 Lab. I.C. page 233 it was a case of increase in working hours and at page 784 was a case of rationalisation or standardisation or improvement of plant or technique by itself it was also given that the workman must show that the change had adversely effected the workmen as the word "affected" in S. 9 A only means "adversely effected". The case cited 1975-Lab. I.C. page 1429 was about withdrawal of compensatory allowance. The case referred 1979-Lab. I.C. page 196 was about change in weekly off day. Therefore, I find that the argument that the section 9-A of the I.D. Act was applicable to the present case, is without merits. It was admitted that there was change of designation but there was no change in the emoluments or condition of service. It was also not proved the change had adversely affected the workman.

Reverting to the merits of the case that he refused to work as turner and refusal of duty was shown as mis-conduct in clause 22(1) of the Certified Standing Orders and punishment was provided in clause 23(3).

As regard the plea of victimisation of the workman given in the claim statement, he has not been able to prove anything in this behalf because he could not give the name of the union. He further stated that he never attended meeting of the union. Therefore, I do not think that there can be any grouse by the management against the workman only because he happened to be a member of the union. The management followed the procedure of holding enquiry. There was no provision of second show cause notice before the penalty imposed upon the

workman. It may be borne in mind that the management has to see the wheel of industry running. It was to allot duty and take work from the workmen as exigencies arose. It is prerogative of the management to allot duty to the workmen in the place best suited to the management. In the present case, the transfer did not change any condition of service or affected adversely. Therefore, I find that the order was competent and action was rightly taken.

While answering the reference, I pass my award that the workman was not entitled to any relief.

Dated the 10th September, 1982

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 981, dated the 14th September, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-PV-6Lab/9888.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the Dispute between the workman and the management of M/s Autometers Ltd., Mathura Road, Ballabgarh.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 124/1977

Between

Shri S.N. Sharma Workman and the management of M/s Autometers Limited, Mathura Road,
Ballabgarh.

Present.—

Shri S.S. Gupta for the workman.

Shri C.M. Lal for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri S.N. Sharma and the management of M/s Autometers Limited, Mathura Road, Ballabgarh, by order No. ID/FD/925-A.75/28255, dated 29th July, 1977, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of service of Shri S.N. Sharma was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filled their pleadings. The following issues were framed by learned predecessor on 25th May, 1978 :—

- (1) Whether Haryana Government is not the appropriate Government to refer the dispute? (OPM)
- (2) Whether the transfer of the workman concerned to Madras was within the competence of the management? (OPM)
- (3) Whether the workman abandoned the job of his own accord?
- (4) Whether the dispute is not covered under the Industrial Disputes Act?

- (5) Whether the termination of services of Shri S.N. Sharma was justified and in order ? If not, to what relief is he entitled ?

The management examined Shri M.J. Mantry President of the management as MW-1, Shri Parkash Chand Cashier E.S.I. Corporation, Ballabgarh as MW-2 and Shri Chhatar Singh Vats L.D.C. Provident Fund Officer as MW-3. The workman examined himself as WW-1, Shri Mohinder Nath, Head Clerk Office of the Labour Officer as WW-2, Shri Hans Raj Ex-Workman of the management as WW-3 and Shri Parkash Chand Resident of 2-H/84-NIT as WW-4. Arguments were heard. My finding issue-wise is as under :—

Issue No. 1.—The contention of the management is that the name of the employee was struck off when he failed to attend his duty at Madras. Therefore, the cause of action rose at that station and not at his previous place of posting at Ballabgarh. In such situation according to the management, Government of Haryana State was not appropriate Government to refer the dispute.

It was the case of the both parties that the workman never reported for duty at Madras Office. He throughout remained and contested the order of transfer at Ballabgarh. The workman cited 1979-LLN-page 141 nearly on the same subject in which it was held that "To confer jurisdiction for reference on the State Government concerned, it is not absolutely necessary that the cause of action wholly or exclusively should arise in that State. There may be cases where part of the cause of action arose in two or more States. In such cases, two or more States may have concurrent jurisdiction. When the question regarding the territorial jurisdiction crops up, what is to be asked and answered is whether the cause of action substantially arose in the State. The Government of which referred the dispute for adjudication. In the instant case, the notice of transfer of the workman was served on him in the State of Kerala and the order relieving him from duty also was given in the State of Kerala. The transfer order and the relieving order are under challenge in the writ petition, if not directly, at least, collaterally. Considering all these aspects of the matter, the State of Kerala was competent to refer the matter for adjudication and the Tribunal has jurisdiction to decide the dispute referred to it."

In the present case, the order of transfer originated at Ballabgarh in Haryana State, therefore, the Government of this State had jurisdiction to refer the dispute. This issue is decided accordingly.

Issue No. 2.—The management placed on record appointment letter Exhibit M-18, confirmation order Exhibit M-19 and copy of standing orders Ex-M-15, Clause-5 of the appointment letter states "In case you are brought on the regular employment of the factory, you will be bound in the employment subject to the rules and regulations of the Company enforced from time to time." In confirmation order which was an admitted document and signed by the workman, one para was as under :—

"You will perform your duties in accordance with the nature of work assigned to you at the usual place of work or at any other place or places of work, or department where you may be posted or transferred."

Clause 19 of the Standing Orders reads "Workman shall be liable to be transferred from the works to any other establishment of the company whether at Faridabad or outside, and shall also be liable to be transferred from one department to another or from one job to another subject to the conditions that the wages of the workman are not affected to his advantage and reasonable joining time, T.A. and a special allowance to cover up the increased cost of living if any is allowed to him.

This will be applicable to all the workmen whether recruited before or after certification of these Standing Orders".

Further more the learned representative of the management referred 1954-I-LLJ-page 36, 1960-I-LLJ page 556, 1977-II-LLJ page 199 and contended that it was inherent in the cause of the management to transfer its employee for exigencies of the work in the interest of the management. On the other hand, learned representative for the workman contended that the Madras Branch was opened subsequently to the appointment of the Workman. He cited 1977-II-LLJ-page 382 to argue that the transfer was not within inherent power of the management. By going through the above, it was clear that there existed stipulation in order of confirmation of the workman and clause in the Standing Orders of the company, regarding transfer of the workman. Therefore, as regards the competency of the management it was clothed with such powers. This issue is therefore, decided in favour of the management.

Issue No. 3.—In evidence, the President of the management deposed that the workman was Assistant Store Keeper in the factory at Ballabgarh. There were offices of the company at Bombay, Calcutta, Madras and Delhi. A requisition was received for a experienced man in the filed of Store. The requisition slips were Ex. M-1 to M-3. The concerned workman was transferred,—vide letter Ex. M-4. He further stated that the workman requested for payment through letters Ex. M-5 and M-6. The management informed him to collect amount,—vide Ex. M-7 and he received the payment. Copy of receipt was Ex. M-8. The workman did not join his duty at Madras. A telegram in this behalf was received. The workman filed civil suit regarding his transfer and obtained a temporary injunction from the Civil Court. The injunction was later on vacated

and suit dismissed. Copy of the order passed in that suit were Ex. M-9 and M-10. The workman did not proceed to Madras even after dismissal of his suit. Copies of telegrams were Ex. M-11 and M-12. Letter Copy Ex. M-13 was sent to the concerned workman. He filled an application under Section 33(c)(2) of the Industrial Disputes. Copy of the order was Ex. M-16. In cross-examination, he stated that Madras Branch was opened in the year 1973. The concerned workman deposed that he was appointed,—vide Ex. M-18 and joined duty on 1st November, 1965. He was confirmed,—vide Ex. M-19. He was issued transfer order vide Ex. M-4 against which he protested. Protest was recorded by him on Ex. M-4/1. He also protested,—vide Ex. WW-1/1. He received reply,—vide copy Ex. WW-1/2. He served a notice upon the management, copy Ex. WW-1/3 which was replied by the management vide Ex. WW-1/4. Another through his Advocate was sent copy Ex. WW-1/5 and reply received,—vide letter Ex. WW-1/6. He filed Civil Suit and was granted stay order. His stay order lateron was vacated and the management struck of his name on 6th October, 1975. He was not paid any retrenchment compensation or notice pay. He sent letter Ex. W-1/9 to the management, reply of which was WW. 1/10. He was victimised because there was a change in the management and the new management. He was loyal to the previous management. He was also victimised because he was union leader. In cross-examination, he replied that he had been ordered to reach at Madras. He had received letter Ex. M-5 to receive payment of Rs. 750. He admitted that he had written letter Ex. M-6 to the management. It was also correct that he did not go to Madras on 5th August, 1975. He filed Civil Suit after 5-7 days of 5th August, 1975. He admitted that he did not report at Madras even after vacation of the stay order. He had received letter Ex. M-13. He admitted that Certified Standing Orders were enforce in the company. He was member of the union.

The learned representative of the management argued that the workman had received transfer expenses from the management and did not go to Madras rather dragged the management in litigation. He failed to report for duty even after dismissal of the Civil Suit. The abandonment of job by him was clear by implication. On the other hand learned representative for the workman argued that there was no intention to abandon the job. The workman had challenged the unjustified order of the management.

I have gone through the documents and find that the concerned workman was transferred,—vide letter Ex. M-4/1. He was allowed three weeks time to get ready for leaving for Madras and was also allowed a sum of Rs. 750 to meet the transfer expenses. It is also given in the transfer order that the workman will receive a sum of Rs. 20 per day for three weeks by way of settling allowance. The letter was dated 10th July, 1975. The concerned workman wrote on 22nd July, 1975,—vide copy Ex. M-5 for payment of the amount referred in the transfer order. He again made the same request on the next date,—vide Ex. M-6 and requested for extension of his joining time. The management informed for collection of the amount in the letter Ex. M-7 on 28th July, 1975. He received payment of Rs. 750—vide voucher Ex. M-8 on the same date. The management was informed by telegrams that the workman had not joined duty upto 12th August, 1975. and 1st October, 1975, I find from copy of order passed by the Sub-Judge Class I, Palwal, copy Ex. M-9 that the workman filed Civil Suit on 16th August, 1975. in which the order of transfer was stayed lateron the Sub-Judge in his order dated 24th September, 1975 held that the management had authority to pass transfer order. It was also held that the workman had consented to the transfer by drawing travelling allowance/expenses from the management. The management by letter dated 6th October, 1975 copy Ex. M-13 removed the name of the workman from rolls of the company under terms of clause 9(f) of the Certified Standing Orders. It is very clear from the record that the workman first showed his sincerity and willingness in the matter of transfer by writing letter for receiving Rs. 750 and requesting the management for extension of joining time. On receipt of the amount it seems that he changed his mind and issued a registered notice through his advocate challenging the transfer orders. The management retriated its stand of transfer and the workman filed a Civil Suit which was ultimately dismissed. Thus it was clear that the workman decided in his mind not to implement the transfer orders by going to Madras. He was to report for duty at that on station 5th August, 1975 and at last he had obtained stay orders from the Civil Court which was vacated by order dated 24th, September, 1975. The management took action on 6th October, 1975 in removing the name of the workman from the rolls. Thus the management took action after the lapse of two months and Civil litigation. Thus it was abandonedly clear that the workman had not intention to join his duty at Madras and had abandoned his job. This issue is, therefore, decided in favour of the management.

Issue No. 4.—On this issue, the learned representative of the management argued that the provision of section 2-A of the I.D. Act, 1947 were not applicable to the present case as the management had not terminated his service of the workman by discharge, dismissal or retrenchment as contemplated by the section. He contended that it was the workman who had brought about severance from the service. On the other hand, the learned for the workman argued that it was action of the management which brought about an end to the employment of the concerned workman. He also contended that strike off name amount to termination as held by the Hon-ble Supreme Court in 1978-I-LLJ-Page I. The learned representative for the workman cited 1981-I-LLJ-page 62 in which it was held that "Transfer is part of the management function and ordinarily it is for the management to determine the timing and the place of transfer, having regard to the exigencies of business, and where the workman was transferred in *bonafide* exercise of management function, such a transfer is not open to challenge in adjudication proceedings. It is, however, equally well settled that the right of the management to transfer the workman, in accordance with the terms of appointment, is not untrammelled even through this is one of the areas

of industrial relations where there has been minimal judicial interference, and where the transfer was found motivation or otherwise arbitrary it was open to judicial scrutiny in proceedings based on a challenge to its validity or to the validity of termination of services based on refusal to comply with such an order of transfer."

I have also considered the arguments and find that striking of name of the workman from the rolls by the management amounted to termination of his services as held by the Hon'ble Supreme Court in Delhi Cloth and General Mills Limited V/s Shambu Nath Mukerjee, 1978-1-LLJ-page-1. It, thus, falls within the ambit of section 2-A which speaks "Whether an employer discharge, dismiss, retrench or otherwise terminate the services of an individual workman etc. thus it fall in the category of words "otherwise terminated". Therefore, on my above discussion, I find that dispute is covered under the Industrial Disputes Act and decide this issue against the management.

Issue No. 5 :—This issue is regarding merits of the case and workman led evidence to show that he was victimised. Shri Hans Raj WW-3 and Shri Parkash Chand are ex-workman of the management and deposed that the concerned workman was a member of the union and took interest in its activities. The concerned workman has also tried to show that his transfer to Madras was by way of victimisation because he was considered to be loyal to the previous management. No credence could be attached to this evidence because nothing was proved on file beyond the oral assertion of the workman in this behalf. There is no words about change of management in the claim statement. As regards his union activities which he has also mentioned in the claim statement, he has not given as to what kind of activities he was involved which annoyed the management. According to him he was only a member of the union. Therefore, it cannot be asserted that it was a case of victimisation. More so that he had gladly accepted the transfer order by requesting for travelling expenses and receiving the amount.

The main contention of the learned representative of the management was that strike of name of the workman from roll amounted to retrenchment. Reliance was placed on the decision by the Hon'ble Supreme Court in L.R.D'Souza V/s Executive Engineer Southern Railway in which it was held as under :—

"If termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf (iv) or termination of the service on the ground of continued ill health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to a automatic discharged from service under agreement would nonetheless be retrenchment within the meaning of expression in S. 2(oo). It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment."

It was an admitted case of the parties that the management had not paid retrenchment compensation to the workman as was necessary by implication of the law laid down in the above said ruling. Although the same may feel hard to the management in the given case. However, it was in the letter Ex. M-13 that the workman could collect his dues at any working day and the workman had insisted on payment of the same through money order,—vide his letter Ex. WW-1/9 and the management insisted upon his personal appearance for payment because a proper receipt was to be obtained,—vide letter Ex. W-1/10.

The management examined Shri Parkash Chand of E.S.I. Corporation as MW-2 who deposed that Shri S.N. Sharma S/o Shri Raghubir Singh Sharma a village and P.O. Alwalpur was insured at No 2536833. The date of appointment was 27th January, 1976. The form was sent by a Avon service(P) Ltd., Ballabgarh. The contribution was received upto May, 1980. There was no cross examination of the witness. Shri Chattar Singh of Provident Commissioner's office appeared as MW-3 and deposed that the Provident Fund No. of Shri S.N. Sharma of Avon Services, Ballabgarh No. PN/1952/63. His total fund from 1976 to 31st March, 1980 was Rs. 3380. It was included interest also. According to the return, Shri S.N. Sharma was still in service. In cross examination, he replied that he could not give the date of the start of the account. He also could not tell if Shri Sharma was previously employed in any other concern. It was, therefore, clear that he was gainfully employed w.e.f. 27th January, 1976. In the peculiar facts of the case, the order of the management become un law full in view of the dictum of the Hon'ble Supreme Court. It goes to my mind that there had been protracted litigation by the workman against the management and naturally the relations could not remain cordial because the workman was already on job from January, 1976. As I have held above that the management was within its power to order his transfer, and the workman had categorically stated when he was examined as WW-1 that he was not willing to go to Madras even now. Therefore there was no question of his re-instatement on the previous job. The workman was already in service. The refore, in the fitness of things, to award him full back wages for the period of unemployment i.e. 7th October, 1975 to 26th January, 1976, retrenchment compensation and other past service benefits for which he was entitled on retrenchment in addition to a sum of Rs. 1000 as further compensation in lieu of cost of litigation etc. will meet the ends of justice. I award accordingly.

Dated the 5th September, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana Faridabad.i

Endst. No. 982, Dated the 14th September, 1982

Forwarded four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-P-V-6-Lab-9890. In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to published the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the Dispute between the workmen and the management of M/s Asha Steel Industries Plot No. 256 Sector 24, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 220/1981

between

Shri R. Jinder and the management of M/s Asha steel Industries, Plot No. 256, Sector -24, Faridabad.

Present—

Shri Mohit Kumar for the workman.

Shri D.S. Kawatra for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Rajinder and the management of M/s Asha Steel Industries Plot No. 256, Sector 24, Faridabad, by order No. ID/FD/9/81/32039, dated 3rd July, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of sSection 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of service of Shri Rajinder was justified and in order ? If so, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filled their pleadings. The following issues were framed by my order dated 21st October, 1981 :—

Whether the termination of service of Shri Rajinder was justified and in order ? If so, to what relief is he entitled ?

And the case was fixed for the evidence of the management. The management examined Shri Fakir Chand Partner as MW-1, Shri Valsaraj Accountant as MW-2 and Shri Gulshan Kumar Partner as MW-3. The workman examined himself as his own witness. Arguments were heard.

MW-1 deposed that the concerned workman was helper in the factory. On 6th April, 1981, the concerned workman quarrelled with Shri Ram Dass who worked in their factory. Next day he called the both workers in his office. The workman raised loud voice and threatened him. At that time Shri Valsaraj Accountant and Shri Gulshan Kumar Partner were present. The accountant was asked to clear the account of the workmen and payment was made in cash which was Exhibit M-1 and signed by the workman. In cross examination, he replied that there was no work. He removed temporary workmen. No F.I.R. was lodged against Shri Rajinder Singh nor any complaint was filed. No written complaint was filed by Shri Ram Dass. Shri Ram Dass was not charge-sheeted. MW-2 deposed that he is accountant from 1976. He occupies the seat in the room where MW-1 and Shri Gulshan Kumar Partner used to sit. He was a witness that Shri Rajinder Singh was being asked about his quarrel with Shri Ram Dass. The concerned workman did not offered any satisfactory reply rather he started speaking in loud tone and intimated. It was order by MW-1 that the account of the workman be settled. He prepared his account Exhibit M-2 and made payment on 7th April, 1981. In cross examination he stated that he was not present at the time of quarrel between the two workers. There was nothing against the workman till then. He denied the suggestion that Exhibit M-1 was fabricated document. MW-3 deposed that Exhibit M-1 was prepared by him and payment of Rs. 904/85 was made to him in cash. He got signature of Shri Rajinder Singh. On 6th April, 1981, Shri Ram Dass came to them and complained that Shri Rajinder Singh quarrelled with him and did not allow him to do the work. At that time MW-1 and MW-2 were also present. He had come at about 4-30 p.m. He was told to come next day. They were called next morning. On enquiry Shri Rajinder Singh started talking in loud voice with Shri Ram Dass and threatened him to kill. On this MW-1

told him not to quarrel but he started quarreling with MW also. He told him that if he come out he will see him. On this MW-1 told to clear his accounts. In cross examination, he replied that Shri Ram Dass had not told any reason of the quarrel. He never told that he used to abuse him after 2-3 days. He had also not told before whom he has abused. He denied the suggestion that Shri Rajinder Singh that Exhibit M-1 was not signed by Shri Rajinder Singh. MW-4 deposed that he was helper for the last 6-7 years. On 6th April, 1981, there was quarrel between him and the concerned workman. He was intimidated by the concerned workman that he will throw him in the canal after beating. He made a complaint to the management. At that time Shri Fakir Chand, Gulshan Kumar, Valas Raj were present when the management called them the next morning and asked the reasons of quarrel. The concerned workman shouted on Lalaji and also intimidated him. Lalaji terminated his service. In cross examination he replied that he had friendship with the concerned workman also and used to entertain him. When he stopped entertaining he was abused. On the date of complaints, the concerned workman asked him to operate hammer. He told that he will do the same after taking his meal. The workman started abusing him. He himself was not hammerman. Although some time he operated the same. The concerned workman also used to operate it. There was no supervisor. Shri Gulshan Kumar allotted the work to them. He had not made a written complaint to Lalaji. They only were called for enquiry. Shri Fakir Chand, Gulshan Kumar and Valas Raj were not present at the time of quarrel. He did not know if the concerned workman was paid anything.

The concerned workman deposed that he was in the service of the management since 1978. No reason of termination was given to him. He had attended duty on 6th April, 1981. On the next morning he was not allowed to enter the factory gate. Lalaji told him that there was no work for him in the factory. He knew Shri Ram Dass Workman. No quarrel ever took place with him. Ex. M-1 was not signed by him. He was illiterate. He did not receive any amount whom in Ex. M-2. In cross examination, he replied that he was not called by Shri Fakir Chand in his office on 6th April, 1981. He denied the suggestion that he was informed about his quarrel with Shri Ram Dass. He also denied that he had misbehaved with Shri Fakir Chand and had threatened him. He also denied that on 7th April, 1981 he was paid Rs. 904/55 in full and final settlement and signed the document.

I have heard arguments of the parties. The learned representative for the management argued that the workman pick up a quarrel and had settled his account with the management and signed the receipt. On the other hand, the learned representative for the workman argued that the service of the workman was terminated on the ground of misconduct without issuing charge-sheet nor any enquiry was held. He further argued that principles of natural justice were not followed by the management.

I have given a thoughtful consideration to the whole aspects of the case, and find that according to the written statement the services of the workman was terminated on account of gross mis-behaviour mis-conduct, Indiscipline and Intimidation to the management as per para one. As regards the full and final payment, he was paid notice pay for one month, retrenchment benefit at the rate of 15 days wages per year, earned leave etc. It means that the management has terminated his services as if he was retrenched, but the stand taken in this written statement is quite different. The management had also led evidence to support the plea of mis-conduct. In the case of mis-conduct, it was incumbent upon the management to serve charge-sheet or hold domestic enquiry. It was true that the management had an opportunity to lead evidence in support of termination by mis-conduct, in case no proper domestic enquiry was held or one that was vitiated for non-compliance of rules of natural justice. It was not the case of the management that the service of the workman was terminated on account of the retrenchment in the factory nor it was that management had invoked same clause of the Standing Orders or contract of employment. The workman had not tendered resignation nor the management issued him any termination letter. He was not surplus in the factory. The management could not be allowed to justify the termination on a ground on which it had never been based as held in 1981 -II-LLJ-page 174. Therefore, I find that the order of the management in terminating service of the workman or making him full and final payment as alleged in Ex. M-2 is not in order. The workman was, therefore, entitled to his reinstatement with full back wages.

While answering the reference, I pass my award that the workman was entitled to his reinstatement with full back wages.

Dated :-The 9th September, 1982

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 984, Dated The 14th September, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.